1950.

File No. S. Bijapur 8/50

Legal **DEPARTMENT**

A. BRANCH

K Received

Subject: Bijapur Suit.

Civil Suit No. 153 of 1948

Gangappa Hullappa Huttannavar - Plff

Vs.

The Province of Bombay and 4 others } - Defts.

Encroachment on Govt. land.

Civil Appeal no. 7 of 1950

S. Bijapur 8/50

File No.

S. Bij 8/50

C O N T E N T S.

Legal Department File No. S. Bij. 8/50

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Bijapur	
		C. S. No 153 of 1948	
		Gangappa Mallappa Muttanawar	
		V/s	
		Province of Bombay and 4 others.	
		Encroachment on Govt land.	
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Information as required by Rule 118(b) of the Law Officers Rules.

Regular Suit No. 153 of 1948.

In the Court of the Civil Judge, Senior Dn., Bijapur.

....

1. Gangappa Muttappa Muttanawar Alias Managdi of Managoli, age 62, Lingayat, Retired Police Inspector, on his own behalf and on behalf of the Hindu Community, at Managoli, taluka Bagewadi, District Bijapur.....Plff.

Vs.

1. The Government of Bombay Province (Summons on the Collector of Bijapur).
2. (Hire Masuti) Mosque at Managoli village Taluka Bagewadi, District Bijapur, represented by the Muslim community.
   by
   Hasimsab Nawajasab Attar, age 50, Muslim, trader, of Managoli, Tal. Bagewadi Dist. Bijapur.
4. Lal-Husensab Shalisab Mujawar, age 50, Muslim, bangle-seller and agriculturists, at Managoli, Taluka Bagewadi.
5. Bandigisab Kashimsab Mulla, age 48, Muslim, Muslim Mulla, of Managoli, and others .....). Defendants.

Claim of Rs. 210/-. For valuation the same.

Herein the Plff. begs to submit as follows :-

In the village Managoli (Taluka Bagewadi, Dist. Bijapur) in the locality called "Hosa-bazar Oni" there are two Blocks as shown in the accompanying map which for convenience sake are called in this Suit Block A and Block B. The two Blocks (as shown in the Garbasti map 1874) are divided on all sides by open spaces and passages vested in the Govt. The Block B is originally a Hindu Locality with Block A and the whole village.

But taking undue advantage of the innocence, tolerance Catholic spirit and indifference of the Hindus, the Deft. Muslims of the village have illegally taken possession by encroachment and otherwise of Hindy buildings and public sites in Block B and converted them to Mosque and its precincts. Not satisfied with such encroachments, the Deft. Muslims with a view to further thrust into Hindu area of Block A launched a campaign of gradual encroachment upon the Govt. open space and land, near the Block A from the South, with an ulterior intention of laying false claim over the private property of Plff. and his 'Bhauband'.

The Map is at pages 22 and 23 of file I. The dispute is regarding the title to the piece of land shown in red, therein.

The plaintiff himself claimed this site as his own in the first instance. But subsequently changed his version stating that half of it belongs to him and half to Government.

The prominent Hindus of the village and the Village Officers have stated that it is the property of the mosque. From this and from the evidence discussed in the order of the Prant Officer, N.D., dated 25-6-1943 it is clear that the Muslims have encroached upon Hindu locality etc.. has no force.

2. In Block B adjacent to the South of the Mosque which is in this suit called No. 128, was a house No. 129 measuring about 23' x 15' owned by one Balaji Shriniwas Aulkarni whoh sold it to the Deft. Muslims on 28-10-1933 by a registered sale-deed. It was immediately raised to the ground and a high Katta on it made, making it appear as part of the Mosque. Almost the same year the Deft.Muslims encroached on the Govt. open space and passage towards the East and the North as shown in dotts by putting a compound wall with an iron gate into it touching the South-East corner of house No. 138 between which and house No. 133 (now open space) there runs a North-ward public passage. Another public passage running in between the two blocks West-East-ward, meets the walls of the said house No.138 and its neighbour 137. This E West-East open space of public passage touches the Southern walls of the Plff's bhauband Gurlingappa Basappa's shop No. 125/2 and the public well and the Northern walls of Nos. 126 (now merged in the present Mosque-buildin) and 132 and 133) (both Govt. open space now.)

There is also Govt. strip of open space of about 6' x 3o' which opens into open space in south and into well-steps in the North, between the East Wall of the Plff's shop and the West wall of the public Step-well. The Plff. has been continuously from time immemorial in enjoyment of easement rights of going in and out of the strip of the open space for repairs to his walls and roof and other necessary purposes. Very recently, an unplanted 'Bor' thee has been growing there, overhanging its branches over the walls and the roof of the Plff's shop No. 125/1, dropping their leaves into the well-water and striking its roots against the foundations of the walls of the said shop and those of the well to their injury. But this strip of open space which is the precincts of the step-well, was openly used by both the public in two Blocks in the villageto fetch water from the well by going through the coming from it by the Southern-open-end through the West-East public passage between the two Blocks. But this was so, as long as there was shop No. 124 and a considerable time after the No. 124 fell into ruins.

3. The Deft-Muslims then proceeded to illegally build on the Govt. open spaces of Nos. 130, 131 and 132 a low level katta in 1934 extending it in a rectangular encroachment across the West-East public passange of the Govt. as shown in the accompanying map with dishonest intention of laying along other things false claim over the public well as the Mosque or Muslim well by designedly [illegible] a water drawer in the ancient stoney

. The Muslims, the Prominent Hindus and the Village Officers are unanimously one in saying that the open space with the compound wall is the property of the mosque.

The Plaintiff has nothing to do.

5 M

frma of the Southern wall of the Hindu well.

4. Again in 1937, the Deft. Muslims illegally encroached upon the Govt. open space of the said West-East public passage at the West corner of the passage, by building a shop-structure with a compound across the North-south open strip, called in this suit 'Masid shop' in the accompanying map, and closed to the public the whole strip by fixation of a wooden door, agress and ingress being restricate-d to Muslims only.

The Plaintiff has nothing to do.

5. The Deft. Muslims in pursuance of their aggressive policy thus made manifest with scant regard for the rights of Plff. and the Govt. put on or about 10-1-1942, west-east chest-high wall across the strip of the open space, completing tentatively their illegal encroachment scheme designed to bring the great public ancient Hindu step well of the village and the strip of the open space with 'Bor' tree on, within the alleged compound wall of the Mosque at No. 128 in Block B. After having allowed some time of lull to run on, for the digestation of this much achievement of encroachment, the Deft-Muslims would spring from this step to the next one of claiming Plff's shops and other houses and public property in the vicinity of the step-well to be Mosque or the Muslim property and create conditions of breach of peace.

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6. To vindicate, therefore, the rights of the Plff. and the public and to prevent their infringment by the Muslims and to evict them from the said illegally encroached positions, the Plff. made in the first instance an application to the Prant Officer on 16-1-1942 to order the said 'Bor' tree to be cut down, in view of the conditions obtaining as said above. Before the order duly made, was acted up, the Deft-Muslims with the active assistance of an Out-Post Police Havildar, got stay of the execution order. Things being misstated and mis-represented, the concerned officer not applying his mind to the real situation and not allowing Govt. to have their say in the ma ter unauthorisedly preferred appeasement of the Deft-Muslims even by inducing a handful Hindus to his view of things as appear only to the eyes and sent up his remarks favourable to the Muslim-Defts., though he held that they (the Muslims) had no shred of title in them on the open space.

7. Hindus of the locality now rudely awakened by the madness of the Muslims after encroachment, running with leaps, were legally determined to resist the agression and appeared on the record. At every state of enquiry before the Officers, the Muslim-Defts. raised the pitch of their false claim to the extent of ludicrousness and ultimately on grounds of village sanitation, the 'Bor' tree was ordered to be chopped off, the row of threatened breach of peace having been tested to be baseless. Mean-while a new Prant Officer (Mr. Allabax) coming on the scene,

Pandora's box of 'Illas' opened to afflict the Plff. and the Hindu community.

8. Keeping before his eyes a most important and vital document, Gharbast map from which the numbers above referred to have been adopted for convenience sake which is a complete answer to the Muslim fraudulant encroachments as said above, the said Officer wrote out baselessly a harmful Order which contains a suppression of the truth of the situation of the well in Block A, and a fraudulant suggestion of the same being No. 128 itself where the Mosque stands. The order wrongly mentions the "newly made passage to be through building No. 127(in Block B) leading direct into the well" through building No. 127 (in Block B) leading direct into the well", when it is contratily through No. 124 a shop now an open sapce (now Block A). The order going beside the occastion has given the Deft-Muslims an unfounded base on which they can set up a false claim against the Plff. in the first instance, and against other Hindus stage by stage. Thus, without any evidence and jurisdiction, he illegally wrote in the order that Plff's shop (No. 125) are the Mosque or the Wakf property.

The Prant Officer who held the enquiry under Section 37(2) L.R.C. in the case comes to the conclusion that the Mosque is shown in the Ghar-Basti map as property No. 128. He has drawn an enlarged map of the Ghar Basti map and is enclosed at page 127, file.I. The site in dispute is shown in the map with red colour. From the said enlarged map it can be seen that no such a strip of land like an island in the midst of the property of the mosque would be of Govt. Malki. The map at page 128 shows the present situation in comparison with that of 1874. The red protion is under dispute now. The blue portion is Mr. Mangoli's house, Out of the property No. 127 a passage has been newly made to go to the well which was formerly included in the mosque's property, No.128. By and by it will be seen that the shop of Mr. Mangoli and his bhaubands are in the property of the mosque. Mosque property is wakf property. It is in alienable. Limitation Act does not apply to it. Mr. Mangoli and his bhaubands are encroachers on Mosque's property but it is for the Civil Court and the Collector as Administrator of the Wakf property to decide on this matter.

As it is a dispute between two private parties i.e. the panchas of the mosque and the plaintiff, Govt. has nothing to do in the matter.

9. In an appeal filed by the Plff. on 10-9-43 against the order, the Collector ignored the facts in dispute and on every supervicial grounds, ordered in effect his subordinate the Prant Officer (Mr.Kazi) to cut off the branches of the 'Bor' tree. The same having been in effect strangly refused to be executed by the Prant Officer, the Commissioner was moved in appeal which was dismissed by him on 24-4-1947 directing the Plff. to the Civil Court.

10. Hence, the Plff. is compelled to bring this Suit in his individual and representative capacity for permanent injunction to the Muslim-Defts. not to obstruct the Plff. to cut the 'Bor' tree with declaration in the connection that the Muslim acts of agression detailed in the plaint above, are encraochments on Govt. land and open spaces with injunction that they should be removed by the Defts. forthwith.

11. The Plff. and Defts. and thesubject Matterof the suit are within the jurisdiction of this Court and cause of action also arisen here. Hence this Court can try the suit.

12. The cause of action regarding injunction in connection with the Bor tree and declarations sought regarding encroachments on Govt. spaces and lands, arose on 24-4-1947, when the Commissioner referred the Plff. to the Civil Court.

13. The Govt. is made party to the Suit as its Officers by illegality with regard to gross negligence of the Plff's rights and State's rights over open spaces under the provisions of Law have affected and injured seriously the rights of the Plff. of the State and Hindu community of the locality as above. It is the duty of the Deft-Govt. to duly vidicate their properietory rights over the open spaces in question for protection of the rights of the Plff. and the Hindu community which were wrongly ignored by the Officer to favorr the Deft-Muslims as said above.

Deft. No.2 sets up false encroachments to the detriment of and hurt to the rights of the Plff. and the Hindu community through the Deft. No. 3,4,5 and others. Hence they are made parties in their individual and representative capacity.

The Plff. as described above brings this suit on his own and on behalf of the Hindu community of the village and a community of interests.

14. Notice under Section 80 of the Civil Prodedure Code was given on 22-1-1948 to the Govt. of Bombay which accepted it on 23-1-1948 through the Collector of Bijapur and the suit is in time.

15. The Court fee is paid.

Re: Injunction with respect to Bor tree on As.	Rs.5.
Re: declarations with respect to encroachments as sought in plaint in paras 2,3,4 and 5 in all ...	" 200
Re: injunction as prayed in para (16) on Rs.	5
	Rs. 210
Court fee paid on totel amount of	---

Court fee of Rupee 1/- to the 2-injunctions and Rs. 18-12-0 on declarations in all As. 19-12-0 paid.

For the Juridiction of the Court and Pleader's fees the amount is the same.

XVII

16. Prayer :

(a) The plaintiff prays :
for permanent injunction against Defts. not to obstruct the Plff. in exercising his rights of going and coming from the strip of open space as mentioned in Plaint para 2 and of cutting the 'Bor' tree with declaration.

(i) that the compound wall marked in dotts from the south-East corner of house No. 129 (now high 'Kattax) as mentioned in plaint para 2.

(ii) that the low level 'Katta' built on the Govt. open space to the East of the Mosque trespassing on the Govt. West-East passages as shown in the Map and as mentioned in plaint para 3.

(iii) that the building called 'Masid shop' and the wooden door with compound wall across the North-south open space between the two Blocks as described in plaint para 4.

(iv) that the East-west wall placed across the Govt. strip of open space, between the back wall of the Plff's shop No. (125) and the west wall of the public step well in block (A) as described in plaint para 5.

are all illegal encroachments by the Muslim-Defts on Govt. lands seriously affecting the rights of the Plff. and the Hindus of the Place.

Setting aside the order of the Commissioner, S.D., Belgaum's No. L.N.L.A.P. 1222 dated 24-4-1947.

(B) and

for permanent injunction to the Defts to remove the above said obstruction and encroachments etc. as prayed above and for such other reliefs as are consistant with the Plff's claims and as are deemed fit by the Court in the interests of the Plff. and the public of the Hindu Community.

(C) For costs of the suit.

(D) The Plff. begs to be permitted amend the plaint if and when necessary.

The plaintiff prays that the decree accordingly passed in his favour.

In view of the facts stated above and the evidence discussed in the order, dated 25-6-1943 (P.147 and 150, File No. I) of the Prant Officer, N.D. the plaintiff is not entitled to maintain a suit and for the cost of the same.

Bijapur.
April 1948.

Sd. G.L.Mangoli
Plaintiff.

True copy.

Sd. x x x
Pleader for Plff.

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for Collector, Bijapur.

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Bijapur Civil Suit

No.153 of 1948.

This suit arises out of encroachment proceedings under sect.37 of the Land Revenue Code. The plaintiff however does not claim any right of ownership over the land in suit. He contends that it belongs to the Govt. and not to the mosque and claims an easement of a right of way over a portion of it. He has impleaded Govt. as defendant No.1 because in the enquiry under S.37(2) of the Land Revenue Code, the land was declared to be the property of the mosque. The other defendants are Muslims and it is clear from the plaint that the suit is the result of a feeling of hatred and animosity towards the Muslims. The Prant Officer and the Collr. after a personal inspection of the site and after examining the documentary evidence concluded that the land was appurtenant to the mosque. But whether it is mosque property or Govt. property is a question with which the plaintiff is not concerned in the least. The suit is therefore misconceived and not maintainable.

Defence of the suit may be sanctioned on the lines of the appended brief.

RLA 8/4

RLA 8/4/49

Recd 11.4.49

(9/4/49)

REVENUE DEPARTMENT
SECRETARIAT, BOMBAY.
9.4.49

1541
18/4/49

Bijapur Civil Suit No. 153 of 1948.

In the Court of the Civil Judge Senior Division, Bijapur,

1. Gangappa Muttappa plaintiff.

Vs.

1. The Province of Bombay

and 4 others. defendants.

Herein Defendant No. 1 (The Province of Bombay) submits as follows:-

1. The allegations in paragraphs1 to 13 are not true and hence denied.

2. The plaintiff admits that this defendant is the owner of the suit site and that he has no right over it. Hence it is submitted this suit is not maintainable.

3. Allegations in paragraph 13 are not true. This defendant has not caused obstruction to the plaintiff. The plaintiff has therefore no cause of action against this defendant, so far as relief for injunction is concerned.

4. The cause of action against this defendant, if any, is quite different from cause of action against other defendants. Hence this suit is bad for misjoinder of parties and causes of action and it also contravenes the provision of Order 2 rule 3 of the Civil Procedure Code.

5. Even on merits the plaintiff has no case. Apart from the right of this defendant to the suit site, the Collector and the Prant Officer were justified in holding that the site in question belongs to the Mosque. The plaintiff is not concerned with the question whether the site belongs to Government or to the Mosque.

It is therefore prayed that the suit be dismissed with costs.

District Government Pleader, Bijapur.
P.T.O.

I. K.R. Rao, District Government Pleader Bijapur declare that what is stated in paragraphs 1 to 5 above is true on information received and believed to be true.

Signed on at Bijapur.

District Government Pleader, Bijapur.

Civil Suit No. 153 of 1948.

Issues.

Exh. 31.

1. Whether the plaintiff proves his title to the plaint property ?

2. Whether the defend nts trespassed on the plaint properties as alleged ?

3. Whether the plaintiff proves that he has acquired an easementary right as alleged ?

4. Whether any cause of action has acrued to the plaintiff.

5. Whether the property is part of the wakf property as alleged ?

6. Whether the defendants have perfected their title by adverse possession ?

7. Whether the suit is bad for multifariousness ?

8. Whether part or the property is a Public High way and is public property as alleged in the plaint ?

9. What orders ?

20-6-1949.

Sd. A.C.Sequeira.
Civil Judge Senior Divison,
Bijapur.

" True Copy "

DistrGovt. Pleader, Bijapur.

In the Court of the Civil Judge, Senior Division,

At Bijapur.

Pleaders.

Civil Suit No.153 of 1948.

Mr.V.V.Mudholkar.

1. Gangappa Muttappa Muttappanawar alias Mangalon his own behalf and on behalf of the Hindu Community at Managoli. plaintiff.

Vs.

Mr.K.R.Rao. for deft.No.1

1. The Government of Bombay Province

Mr.K.A.Janvekar for deft Nos. 2 to 5.

2. (Hire-Masut)Masque at Managoli village, represented by the Muslim Community by
3. Hasimsab Nawjsab Attar
4. Lal-Husensab Shalisab Mujawar
5. Bandigisab Kasimsab Mulla. defendants.

Claim Rs.

Judgment.

This is a suit filed by the plaintiff on behalf of himself and other Hindus against defendants Nos.2 to 5 on behalf of themselves and other Muslims and against the Government of Bombay complaining of an obstruction to a Public thorough-fare.

2. The plaint is based on the allegations that the Muslims trespassed on sites belonging to Hindus and to Government, that the building of a construction over a public street by occupying and enclosing it has obstructed a public highway, that there is a tree on a portion of the public Highway, that the branches of the tree overhang the property of the plaintiff, that the leaves of the tree falling into the public well has the effect of polluting the water of the public well, that the conduct of the Muslims has been aggressive throughout, that the District Deputy Collectors took their side against the Hindus, that their order upholding the claim of the Muslims was perverse, that the Prant Officer refused to execute the order passed by the Collector to cut down the tree, that the plaintiff's appeal to the Commissioner was regarded with disfavour and that in consequence the plaintiff is compelled to bring this suit.

3. The Government of Bombay in their written-statement Exh. 27 contend that no cause of action has accrued to the plaintiffs as against the Government of Bombay, that the suit is bad for misjoinder of parties and causes of action and that the Revenue Officers were justified in taking the view they did.

4. The defendants in their written-statement Exh.21 deny the allegations made in the plaint. They submit that the suit is brought merely to harrass the Muslim community, that they did nottrespass on a public highway and on sites belonging to Government, that the site in question is not a public highway, that the plaintiffs have not enjoyed a right of easement to go acress the land in suit, that the several orders passed by the Revenue Officers were passed after a proper enquiry, that no cause of action has accrued to the plaintiff, that the site in question forms part of the mosque and is Wakf property, that the suit is not tenable, that the suit is time barred, that the site in question has been in their possession for more than 60 years and that they have perfected their title by adverse possession.

5. The following issues were framed in the case:-

1. Whether the suit property is a highway and is Government site ?
2. Whether the Muslims trespassed on the plaint properties as alleged ?
3. Whether the plaintiff proves that he has acquired an easementary right as alleged ?
4. Whether any cause of action has acrued to the plaintiff ?
5. Whether the property is part of the Wakf property as alleged ?
6. Whether the ~~prxxxxxxxxx~~ Muslims have perfected their title by adverse possession ?
7. Whether the suit is bad for multifariousness ?
8. Whether part of the property is a public highway and is public property as alleged in the plaint ?
9. What orders ?

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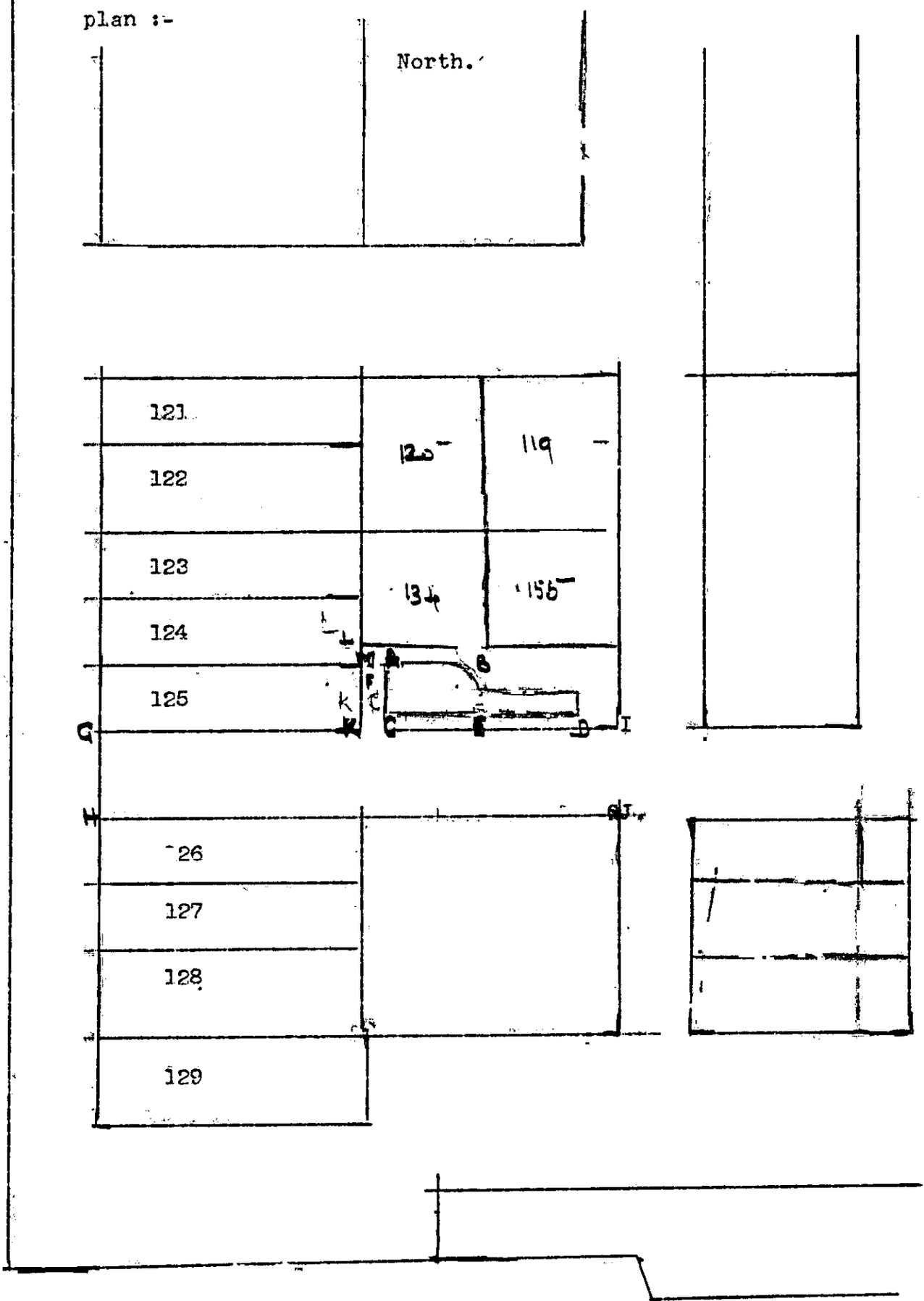
~~23~~

6. My findings are:-

1. The passage G H.I J and the land K C. M A are high ways.
2. Muslims unwarrantably diverted those highways and caused obstruction.
3. Yes. 4. Yes.
5. The highways G H. I J and K C M A are not of the ownership of the Wakf.
6. No. 7. No.
8 Findings recorded above. 9. General issue.

Reasons.

7. The Locus in quo is shown on the following rough plan :-



8. This is a suit filed by the plaintiff on behalf of himself and other Hindus against defendants 2 to 5 on behalf of themselves and other Muslims for the removal of an encroach-ment and obstruction to what is alleged to ne a Public passage. The plaintiff's case is that there is street in the village Mangoli alongside G H I J on the plain. When this street comes to the points K C a lane runs from that point northwards. All the villagers of this village are entitled to use the public well marked A B C D. They go on to the passage G H I J which enables them to go northwards up the passage K C M A on their way to the steps of the well near A. By going to the point E they can also get water from the well by meansof a Pulley.

9. And the gravamen of the plaintiff's complaint is that Muslims blocked up the passage at one and by erecting a shop and fixing a door alongside G H so as to obstruct the plaintiff and other Hindus from using the street and the lane and from taking water from the well.

10. The defendants deny that there was a public right of way over the strips G.H I J and K.C M A. They submit that the site in question is of the ownership of the Mosque.

11. The case thus splits into two parts. Firstly, as to whether the strip G H I J and the strip K C M A are of the ownership of the Mosque. Secondly, as to whether there was a public right of way over the passages in question.

12. To my mind, the point taken by Muslims that the site in question belongs to the Mosque is a perversion and an afterthought because the documentary evidence conclusively shows that the Mosque did not own the vacant sites in question. It is noticeable that the vacant site K C M A is to the east of house properties 125 and 124. It adjoins the Public well westward. In the Charbasti map of 1874 Ex.58 it is shown as forming part of the public well and going along with it. It is observable that the Mosque is an enclosed court-yard consisting of plots bearing Nos. 126-133 to the south of the passage G H I J. Undeniable the strips G H I J and K C M A are not of the ownership of the Mosque.

13. The next question is whether there was a public right of way over the passage G H I J and K C M A. Muslims explain by saying that the villagers of this village can go to the steps of the well acress land bearing No.124. It is relevant in this connection to refer to Exh.95, Revenue Record containing the names of house owners in 1874. And if I am to rely on Exh. 95 it is clear that house No.124 originally belonged to one Gurappa. It could hardly be contended, therefore, that the villagers used the well and got water from the well by going across private property.

14. As I have said, the strip K C M A forms part of and goes along with the public well according to the Charbasti map Exh. 58.

15. As stated already, the Mosque is an enclosed court-yard to the south of the street G H I J. The Charbasti map Exh. 58 shows that there was a public right of way across G H I J. The villagers could use the well and get water from the well by coming to the points K C where the street runs from it to north. There is no other way to go to the steps seeing that house No.124 belonged to one Gurappa. To my mind, the circumstance that the villagers of this village are now compelled to get water from the well by using land No.124 cannot whittle down the effect of the documentary evidence. The documentary evidence conclusively shows that the only way to reach the steps of the well and the pulley at point E was across G H I J and K C M A. There was no other way to go except this prior to the new passage across 124 and prior to the blocking up of the passage by Muslims by fixing a door and erecting a shop along G.H.

16. It is observable that the Charbasti map contains a printed line across G H indicating that the lane G H I J was land blocked alongside G H. Obviously this line is a printing error seeing that the passage G H enables the villagers to go alongside G H I J on their way to the well and on their way eastwards. I need not say that there is a public road leading from G H eastwards.

17. Now an obstruction to a public toroughfare is a public nuisance. The public is entitled to the full width

of the public highway and any obstruction thereto infringes the right of the public to that extent. A suit in respect of an obstruction to such a right is one respecting the infringment of a civil right of an individual .A suit will lie at the instance of a private individual where he has suffered special damage by reason of the nuisance as distinguished from the damage suffered by him in common with other persons affected by the nuisance.

18. I quite think that the injury caused to the plaintiff by the obstruction of the way leading from his house property No.125 to the west of the well was peculiar to him because it has caused him substantial loss and it is sufficient to entitle the plaintiff to maintain the action. In order words, the plaintiff's house property is abutting on this lane and naturally he has a special interest in the preservation of this passage. The title to the plaint is in his individual name and on behalf of the other Hindus who are prevented by Muslims from using the public highway. This suit thus involves a claim by the plaintiff in his individual capacity and on behalf of the other Hindus who are specially injured and on behalf of the other Hindus who are specially injured by interference on the part of the Muslims community with the Public right of way.

19. And here I may cite one of the most familiar of English Legal principles, viz., " Onee a highway, always a highway ". My finding is that the passage in dispute G HI J.and KC M A was used as a highway from time immeorial and that the Muslims have no power to divert a public highway and obstruct the plaintiff and the other Hindus from using the highway and from taking water from the well at all times by going across the passage in dispute.

20. It is also a part of the plaintiff's case that Muslims have trespassed across land bearing Nos. 127-133. The documentary evidence shows that these sites were of private ownership. That being so, no cause of action has accrued to the plaintiff.

21. There is a tree near the point F across the lane K C H A. It is clear that the plaintiff and others are put to special inconvenience by the obstruction thus caused. I direct the tree to be cut down.

22. Oral evidence has been adduced. To my mind, it is difficult to hold that the oral evidence on the defendants' side can affect the decision on the question in issue based on documentary evidence of an unimpeachable character. I have inspected the locality in the presence of pleaders and parties. On an examination of the documentary evidence and oral evidence adduced by the parties, I accept the contention of plaintiff. My local inspection has also influenced my determination of the cause.

23. At the trial the plaintiff led evidence that he has an easementary right of eaves dripping across land K C H A and that he has also a right of going upon the passage K F for the purpose of repairing his wall alongside K M. This

question cannot be considered in this case as they do not really arise having regard to my finding that the site in question is not of the ownership of the Muslims.

24. In the result, I pass a decree for the removal of the obstruction to the public thoroughfares marked G H I J and K C M A on the plan. I direct that tree near point F to be cut down as it causes obstruction to a public thoroughfare. I issue a direction to defendants 2 to 5 and the Muslim community generally not to encroach and obstruct the above heighways. I direct the construction alongside G H I J to be demolished. I declare that the villagers of this village have a right to use the well and get water from the well by going on to the passages G F I J and K C M A. The plaintiff to get 3/4th costs of suit from defendants Nos. 2 to 5. Defendants to bear their own costs.

Sd. A.C.Sequiera.

24-11-1949. Civil Judge, Sr.Dn., Bijapur

" True Copy "

Dist. Govt. Pleader Bijapur

Reg. Appeal No. 7 of 1950.

In the Court of the District Judge, Bijapur.

At Bijapur.

1. (Hire-Masuti) Mosque at Mangoli village, taluka Bagewadi, District Bijapur, represented by the Muslim Community by: (appellant No.2).
2. Hashamsaheb Navajsaheb Attar, age 50, trader, of Mangoli, taluka Bagewadi.
3. Lalhusensaheb Shalisaheb Majavar, age 50, Bangle-seller; and agriculture of Do.
4. Bandgisaheb Kashimsaheb Mulla, age 48, agriculturest od Do.

Appellants original defts 2 to5.

Vs.

1. Gangappa Muttappa Muttappanavar alias Mangoli, of Mangoli, age 62, retired Police Inspector, on his own behalf and on behalf of the Hindu Community of Mangoli, taluka Bagewadi, district Bijapur.
2. The Government of Bombay Province. (Summons on the Collector of Bijapur district).

Respondents original-plff and deft No. 1.

Claim Rs. 210/- for both purposes.

Being aggrieved by the judgment and decree passed by the Civil Judge(Senior Divisicn) Bijapur, in II Civil class/suit No.153 of 1948, passed on 24-11-1949, the above-named appellants beg to prefer this appeal against the same judgment and decree, on the following among other grounds:-

1). That the judgment and decree is contrary to law and procedure and against the weight of evidence in the case.

2). That the learned Civil Judge is wrcng in holding that the places marked G.H.I.J. and K.C.M.A. in the rough sketch shown in the body of the judgment are public thorough-fares.

3). That the learned Civil Judge is wrong in holding that the Muslims Community of Mangoli has un-wrrantably diverted the said alleged highways and caused obstruction.

4. That the learned Civil Judge ought to have held that the places marked G.H.I.J. and K.C.M.A. are the Mosque Wakf property.

5. That the learned Civil Judge ought to have held that the mosque and the Muslim community had become owners of the same by even adverse possession.

6. The lower court ought to have held that the Plff's suit was not in time.

7. The lower court is wrong in relying on the Gharbasti map Ex.58 and in coming to the conclusion that the open spaces shown therein are public high ways.

8. That the lower court has failed to note that the Gharbasti map does not show that the open spaces shown therein the public high-ways.

9. That the lower court has not considered other documentary and oral evidence and has come to a wrong conclusion merely by drawing an inference from the Gharbasti map Ex.58.

10- That the lower court ought to have held that the Gharbasti map of 1874 is most unreliable document and no inferences can be drawn from it and it is not conclusive one.

11. That the lower court has not considered the decision of the Government in this connection and has wrongly declared places G.H.I.J. and K.C.M.A. as public thoroughh fares.

12. That the lower court ought to have held that the public of Mangoli use the steps of the well for bringing water since ancient times; and the steps themselves indicate that the thorough fare for using the steps of the well must be from house No. 124 shown in Gharbasti map Ex.58.

13. That the lower court ought to have held that house No.124 shown as belonging to one Gurappa must be an encroachment on the public thorough-fare in 1874 and the same must have been removed by the Public then.

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14. That the lower court ought to have held that the public of Mangoli do not require any other way and no other way is convenient to the public then the way now used by the public since ancient times.

15. That the lower court ought to have held that the water pulley to the well solely belongs to the mosque and others have no access to it, nor the public of Mangoli require the same.

16. That the learned Civil Judge has ignored all the documentary and oral evidence and has made out a case for the plaintiff in the absence of any pleading by drawing wrong inferences from the Gharbast map Ex.58.

17. That the lower court ought to have held that plff's suit was not maintainable under section 91 Civil Procedure Code.

18. That the learned Civil Judge is wrong in holding that plaintiff has suffered special damages beyond that of the general public.

19. That the lower court has failed to note that plffs have never based their claim under section 91 clause(2) Civil Procedure Code.

20. That the order of the learned Civil Judge is vague and indefinite as neither the plaint, nor the order of the Civil Judge gives the exact width and length of the alleged roads.

21. That the lower court is wrong in holding that the plff-Gangappa- has any peculiar right to himself.

22. That the lower court ought to have held that the suit of the plaintiffs was bad for multifariousness.

23. That the lower Court first rejected the defts' request to inspect the site but after the close of evidence, has inspected the site. But has failed to make proper notes of inspection as required by High Court Circular.

24. The lower court ought to have held that plffs had no cause of action and ought to have dismissed their

suit with costs.

Wherefore, it is humbly praued that this appeal be allowed, aetting aside the decree and judgment of the lower court and dismissing plffs' suit with costs throughout.

Bijapur. Sd.K.A.Janvekar.

9-1-1950. Pleader for the appellants.

" T rue Copy "

District Government Pleader,
Bijapur.

31

Suits:
Bijapur.
Encroachment on Government land.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7180.

Bombay Castle, 29th June 1949.

Letter from the Collector of Bijapur, No. LAW. 184, dated the 11th January 1949—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 153 of 1948.

Gangappa Muttappa Muttannawar ... ... Plaintiff;

versus

The Province of Bombay and 4 others ... ... Defendants.

Claim Rs.

Memorandum to the District Government Pleader, Bijapur, No. 4102, dated the 14th April 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

K Leg. H 44—1

*The Revenue Department,
*The Collector of Bijapur,
*The Commissioner, Southern Division,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

33
75-85

BIJAPUR CIVIL SUIT No. 153 OF 1948.

Chronological Statement of Facts.

This is a suit by Mr. Muttannavar, a retired Police Inspector, against Government and four other defendants who are Muslims for a permanent injunction restraining defendants from obstructing the plaintiff in his right of way over the land marked I in the sketch dated 6th March 1949 and from cutting the Bor tree in the same land; and further for a declaration that the structures made by the defendants Nos. 2, 3, 4 and 5 on the sites marked C D F G and I and shaded red in the sketch are encroachments on Government land.

File I p. 15

2. On 16th January 1942 the plaintiff made an application to the Prant Officer in which he stated that the Bor tree which had sprung up near the wall of the Government well was overhanging the wall of his shop marked A in the sketch, that the water dripping from the leaves of the tree in rainy season was causing damage to his wall, and that there was additional danger to his wall due to the growth of the trunk of the tree. He therefore requested that he may be allowed to cut the tree. After consulting the village officers the Prant Officer granted the plaintiff permission to cut the tree.

File I p. 35

3. On 6th March 1942 the Muslim residents of the village made an application to the Prant Officer stating the Bor tree was within the compound of the Juma Masjid (marked D in the sketch), that it was a sacred tree appurtenant to the mosque and therefore it should not be allowed to be cut.

File I p. 147

4. As the strip of land between the well and the plaintiff's shop was claimed by two rival parties, the Prant Officer held an inquiry under section 32 of the Land Revenue Code, and by his order, dated 25th June 1948, he held that that particular strip of land belonged to the Juma Masjid and not to Government.

File III p. 17

5. The plaintiff preferred an appeal to the Collector who held that the plaintiff was prompted to start these proceedings because of his dispute with Muslims that the site was not Government property and that the plaintiff had no right of appeal because the dispute, if any, was between Government and the authorities of the mosque. The plaintiff preferred a second appeal to the Commissioner who dismissed it on 24th April 1947.

6. On 22nd January 1948 plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 19th April 1948 he filed the present suit in the Court of the Civil Judge, Senior Division, Bijapur.

Grounds of Defence.

The plaintiff seems to have shifted his ground from time to time. In his first application to the Prant Officer, dated 16th January 1942, he claimed

that the strip of land marked I in the sketch, dated 6th March 1949, and situated between his shop and the wall of the well was his and that he should be allowed to cut the Bor tree. In his subsequent statement dated 3rd June 1942 before the Prant Officer he is reported to have said that this site belonged either to him or to Government. Finally, in the plaint he contends this area as also the other area shaded red and market C F G and H in the sketch belongs to Government and not to the mosque. In the plaint he asks for two kinds of relief, viz. (1) an injunction against the Muslim defendants restraining them from obstructing him in the exercise of his alleged right of way over the land marked I and a declaration that the entire area shaded red belongs to Government. The plaintiff therefore does not claim any right of ownership over any of the lands. If the area belongs to Government as alleged by him the dispute is between Government and the authorities of the mosque, with which the plaintiff is not concerned. He has therefore no right to maintain this suit and the suit is entirely misconceived.

2. The suit is also bad for misjoinder of parties and causes of action. The plaintiff has no cause of action against Government so far as relief for injunction is concerned, Government has not caused him any obstruction in the exercise of his right of way if any ; nor does the Prant Officer's declaration that the particular strip of land belonged to the mosque give any such cause of action to the plaintiff. The causes of action in the suit are entirely distinct and Government is not jointly interested in them with the other defendants. It should therefore be contended that the suit contravenes the provisions of Order 2, Rule 3, of the Code of Civil Procedure and is therefore not maintainable.

3. Even on merits there is no substance in this suit. It seems from the plaint and from the several applications and statement which he has made that the plaintiff has filed the suit chiefly on account of his disputes with the authorities of the mosque and has tried to get the support of Government by pleading title in Government's favour. In fact several respectable Hindu residents of the village have given a statement before the Mamlatdar on 6th April 1942 that the site belongs to the mosque. The Prant Officer and the Collector have come to the same conclusion after examining the documentary evidence and making a personal inspection of the site. At all events, the question whether the site belongs to Government or to the mosque is one in which the plaintiff can have no interest.

4. The plaintiff claims to have filed this suit in a representative capacity, i. e., for himself and on behalf of the Hindu community of the village. The District Government Pleader should ascertain whether the plaintiff has obtained court's permission to bring this suit under Order 1, Rule 8, of the Civil Procedure Code. In the absence of such permission the suit will not be maintainable.

In the Court of the Civil Judge, Senior Division,

At Bijapur.

Pleaders.

Civil Suit No.153 of 1948.

Mr.V.V.Mudholkar.

1. Gangappa Muttappa Muttappanawar alias Mangoli on his own behalf and on behalf of the Hindu Community at Managoli. plaintiff.

Vs.

Mr.K.R.Rao. for deft.No.1

Mr.K.A.Janvekar for deft Nos. 2 to 5.

1. The Government of Bombay Province
2. (Hire-Masuti)Masque at Managoli village, represented by the Muslim Community by
3. Hasimsab Nawjsab Attar
4. Lal-Husensab Shalisab Mujawar
5. Bandigisab Kasimsab Mulla. defendants.

Claim Rs.

Judgment.

This is a suit filed by the plaintiff on behalf of himself and other Hindus against defendants Nos.2 to 5 on behalf of themselves and other Muslims and against the Government of Bombay complaining of an obstruction to a Public thorough-fare.

2. The plaint is based on the allegations that the Muslims trespassed on sites belonging to Hindus and to Government, that the building of a construction over a public street by occupying and enclosing it has obstructed a public highway, that there is a tree on a portion of the public Highway, that the branches of the tree overhang the property of the plaintiff, that the leaves of the tree falling into the public well has the effect of polluting the water of the public well, that the conduct of the Muslims has been aggressive throughout, that the District Deputy Collectors took their side against the Hindus, that their order upholding the clim of the Muslims was perverse, that the Prant Officer refused to execute the order passed by the Collector to cut down the tree, that the plaintiff's appeal to the Commissioner was regarded with disfavour and that in consequence the plaintiff is compelled to bring this suit.

3. The Government of Bombay in their written-statement Exh. 27 contend that no cause of action has accrued to the plaintiffs as against the Government of Bombay, that the suit is bad for misjoinder of parties and causes of action and that the Revenue Officers were justified in taking the view they did.

4. The defendants in their written-statement Exh.21 deny the allegations made in the plaint. They submit that the suit is brought merely to harrass the Muslim community, that they did nottrespass on a public highway and on sites belonging to Government, that the site in question is not a public highway, that the plaintiffs have not enjoyed a right of easement to go across the land in suit, that the several orders passed by the Revenue Officers were passed after a proper enquiry, that no cause of action has accrued to the plaintiff, that the site in question forms part of the mosque and is Wakf property, that the suit is not tenable, that the suit is time barred, that the site in question has been in their possession for more than 60 years and that they have perfected their title by adverse possession.

5. The following issues were framed in the case:

1. Whether the suit property is a highway and is Government site ?
2. Whether the Muslims trespassed on the plaint properties as alleged ?
3. Whether the plaintiff proves that he has acquired an easementary right as alleged ?
4. Whether any cause of action has acrued to the plaintiff ?
5. Whether the property is part of the Wakf property as alleged ?
6. Whether the ~~pxxxxxxxxxx~~ Muslims have perfected their title by adverse possession ?
7. Whether the suit is bad for multifariousness ?
8. Whether part of the property is a public highway and is public property as alleged in the plaint ?
9 What orders ?

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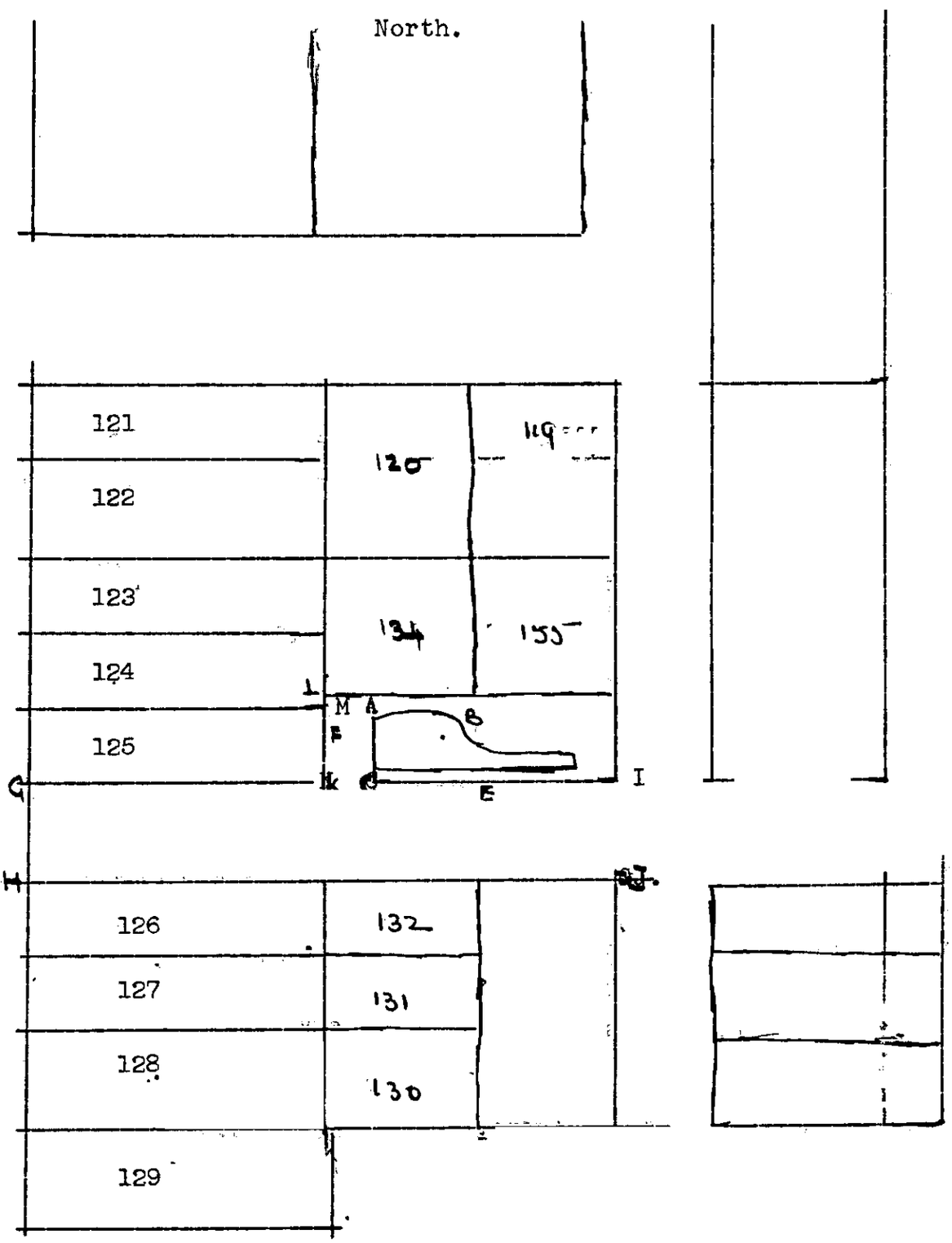
6. My findings are:-

1. The passage G H.I J and the land K C. M A are high ways.
2. Muslims unwarrantably diverted those highways and caused obstruction.
3. Yes. 4. Yes.
5. The highways G H. I J and K C M A are not of the ownership of the Wakf.
6. No. 7. No.
8 Findings recorded above. 9. General issue.

Reasons.

7. The Locus in quo is shown on the following rough plan :-



8. This is a suit filed by the plaintiff on behalf of himself and other Hindus against defendants 2 to 5 on behalf of themselves and other Muslims for the removal of an encroach -ment and obstruction to what is alleged to ne a Public passage. The plaintiff's case is that there is street in the village Mangoli alongside G H I J on the plain. When this street comes to the points K C a lane runs from that point northwards. All the villagers of this village are entitled to use the public well marked A B C D. They go on to the passage G H I J which enables them to go northwards up the passage K C M A on their way to the steps of the well near A. By going to the point E they can also get water from the well by meansof a Pulley.

9. And the gravamen of the plaintiff's complaint is that Muslims blocked up the passage at one and by erecting a shop and fixing a door alongside G H so as to obstruct the plaintiff and other Hindus from using the street and the lane and from taking water from the well.

10. The defendants deny that there was a public right of way over the strips G H I J and K C M A. They submit that the site in question is of the ownership of the Mosque.

11. The case thus splits into two parts. Firstly, as to whether the strip G H I J and the strip K C M A are of the ownership of the Mosque. Secondly, as to whether there was a public right of way over the passages in question.

12. To my mind, the point taken by Muslims that the site in question belongs to the Mosque is a perversion and an afterthought because the documentary evidence conclusively shows that the Mosque did not own the vacant sites in question. It is noticeable that the vacant site K C M A is to the east of house properties 125 and 124. It adjoins the Public well westward. In the Gharbasti map of 1874 Ex.58 it is shown as forming part of the public well and going along with it. It is observable that the Mosque is an enclosed court-yard consisting of plots bearing Nos. 126-133 to the south of the passage G H I J. Undeniably the strips G H I J and K C M A are not of the ownership of the Mosque.

13. The next question is whether there was a public right of way over the passage G H I J and K C M A. Muslims explain by saying that the villagers of this village can go to the steps of the well across land bearing No.124. It is relevent in this connection to refer to Exh.95, Revenue Record containing the names of house owners in 1874. And if I am to rely on Exh. 95 it is clear that house No.124 originally belonged to one Gurappa. It could hardly be contended, therefore, that the villagers used the well and got water from the well by going across private property.

14. As I have said, the strip K C M A forms part of and goes along with the public well according to the Charbasti map Exh. 58.

15. As stated already, the Mosque is an enclosed court-yard to the south of the street G H I J. The Charbasti map Exh. 58 shows that there was a public right of way across G H I J. The villagers could use the well and get water from the well by coming to the points K C where the street runs from it to north. There is no other way to go to the steps seeing that house No.124 belonged to one Gurappa. To my mind, the circumstance that the villggers of this village are <u>now</u> compelled to get water from the well by using land No.124 cannot whittle down the effect of the documentary evidence. The documentary evidence conclusive-
the steps of the well and the pulley at point E was across
-ly shows that the <u>only</u> way to reach G H I J and K C M A. There was no <u>other</u> <u>way</u> to go except this prior to the new passage across 124 and prior to the blocking up of the passage by Muslims by fixing a door and erecting a shop along G.H.

16. It is observable that the Charbasti map contains a printed line across G H indicating that the lane G H I J was land blocked alongside G H. Obviously this line is a printing error seeing that the passage G H enables the villagers to go alongside G H I J on their way to the well and on their way eastwards. I need not say that there is a public road leading from G H eastwards.

17. Now an obstruction to a public thoroughfare is a public nuisance. The public is entitled to the full width

of the public highway and any obstruction theretoinfringes the right of the public to that extent. A suit in respect of an obstruction to such a right is one respecting the infringment of a civil right of an individual .A suit will lie at the instance of a private individual where he has suffered special damage by reason of the nuisance as distinguished from the damage suffered by him in common with other persons affected by the nuisance.

18. I quite think that the injury caused to the plaintiff by the obstruction of the way leading from his house property No.125 to the west of the well was peculiar to him because it has caused him substantial loss and it is sufficient to entitle the plaintiff to maintain the action. In order words, the plaintiff's house property is abutting on this lane and naturally he has a special interest in the preservation of this passage. The title to the plaint is in his individual name and on behalf of the other Hindus who are prevented by Muslims from using the public highway. This suit thus involves a claim by the plaintiff in his individual capacity and on behalf of the other Hindus who are specially injured and on behalf of the other Hindus who are specially injured by interference on the part of the Muslims community with the Public right of way.

19. And here I may cite one of the most familiar of English Legal principles, viz., " Onee a highway, always a highway ". My finding is that the passage in dispute G HI J.and KC M A was used as a highway from time immeorial and that the Muslims have no power to divert a public highway and obstruct the plaintiff and the other Hindus from using the highway and from taking water from the well at all times by going across the passage in dispute.

20. It is also a part of the plaintiff's case that Muslims have trespassed across land bearing Nos. 127-133. The documentary evidence shows that these sites were of private ownership. That being so, no cause of action has accrued to the plaintiff.

21. There is a tree near the point F across the lane K C M A. It is clear that the plaintiff and others are put to special inconvenience by the obstruction thus caused. I direct the tree to be cut down.

22. Oral evidence has been adduced. To my mind, it is difficult to hold that the oral evidence on the defendants' side can affect the decision on the question in issue bassed on documentary evidence of an unimpeachable character. I have inspected the locality in the presence of pleaders and parties. On an examination of the documentary evidence and oral evidence adduced by the parties, I accept the contention of plaintiff. My local inspection has also influenced my determination of the cause.

23. At the trial the plaintiff led evidence that he has an easementary right of eaves dripping across land K C M A and that he has also a right of going upon the passage K E for the purpose of repairing his wall alongside K M. This

question cannot be considered in this case as they do not really arise having regard to my finding that the site in question is not of the ownership of the Muslims.

24. In the result, I pass a decree for the removal of the obstruction to the Public thoroughfares marked G H I J and K C M A on the plan. I direct that tree near point F to be cut down as it causes obstruction to a public thoroughfare. I issue a direction to defendants 2 to 5 and the Muslim community generally not to encroach and obstruct the above heighways. I direct the construction alongside G H I J to be demolished. I declare that the villagers of this village have a right to use the well and get water from the well by going on to the passages G H I J and K C M A. The plaintiff to get 3/4th costs of suit from defendants Nos. 2 to 5. Defendants to bear their own costs.

Sd. A.C.Sequiera.

24-11-1949. Civil Judge, Sr.Dn., Bijapur.

" True Copy "

Dist. Govt. Pleader, Bijapur.

Civil Appeal No. 7 of 1950

In the Court of the District Judge,

At Bijapur.

1. Hire-Masuti(Masque) at
Managoli,village, taluka Bagewadi,
District Bijapur, represented
the Muslim community by:
2. Hashimsaheb Nawajsaheb Attar
age 50, Muslim, trader, of
Managoli, Taluka Bagewadi,
District Bijapur.
3. Lal-Husensab Shalisab Mujawar,
age 50, Muslim Bangle-seller,
at Managoli, taluka Bagewadi
4. Bandgisaheb Kashimsaheb Mulla,
ge 48, Muslim Mulla, of
lanagoli and others. Appellants
(orig: Defts Nos. 2 to
6)

Vs.

Gangappa Muttappa Muttanavar
alias Managoli, of Managoli
village, age 62, Lingayat,
Retired Police Inspector on his
own behalf and on behalf of the
Hindu Community at Managoli,
taluka Bagewadi, District
Bijapur

2. The Government of Bombay Province,
Summons on the Collector of
Bijapur District).---- Respondents.
No. 1 original plff &
No.2 original deft 1).

Herein respondent No.1 submits his cross-objection as under:-

Being aggrieved by the judgment and decree of

the Civil Judge,Senior Division, Bijapur, in Second Class Civil Suit No.153 of 1948, respondent No.1 original Plff- begs to prefer the cross- objections to the judgment and decree of the lower court on the following among other grounds:-

(1) That the reasoning of the lower court as the alleged non-accrual of cause of action with respect to treapass on lands bearing Nos. 127 to 133 is contrary to evidence on record and law.

(2). That the lower Court ought to have held that all spaces in front of, to the east and sout of the mosque and to the south of the puttey constituted public high-way of the village.

(3). That the lower court ought to have held that the said village open sites in suit are the public sites of the village.

(4). That the lower court ought to have held that the Government ppen spaces are public-high--ways as per principle " Once a high-way, always a high way".

(5). That there has been no allegation much less proof that deft No.1- Government- have ever duly given to the Muslim-defendants the suit sites in question.

(6). The lower court ought to have seen that the suit mosque as it stood in 1874 could measure only 11 feet north-south and 23 feet east-west as against its encroachment made u of 126,127 and 128 measuring about 33 feet north-south and 23 feet east-west.

(7). That the lower court ought to have held that the defence was unfounded, gradually developed and deliberately hatched as evidenced from Exs. 51,85, 86 and 99.

(8). That the lower court ought to have held that the contentions of the Muslim-defendants and of Government were collusive.

(9). That the lower court ought to have taken in judicial consideration the " contempt of th court ", act of the defendant-Muslims expressly obstructing or interfering with t administration of justice.

(10). That the lower court ought to have passed orders on Ex.20 though a copy of the same and notice were duly served on defendant Muslims.

(11). That the lower court ought to have awarded full costs to the plaintiff from all the defendants.

(12) That the lower court ought to have awarded compensatory costs from the Muslim-defendants under section 35A of the Civil Procedure Code from the Muslim-defendants.

(13). (i) Court is paid on declarations with respect to encroachments.

(ii). For injunction.

On these among other grounds, this Court be pleased to add to the judgment and decree of the lower court by holding that the spaces to the east, south and in front of the mosque are public high-ways with an order of injunction to the appellants to pull down the east-west wall 55 feet in length with iron gate into it running from 129 to the east(vide map)

Suits
Bijapur
Encro[illegible]
land.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No.9965
Bombay Castle, July 1950.

Read Government Resolution, Legal Department No.7180 dated 29th June 1949.

Endorsement from the District Government Pleader, Bijapu No.125 dated 1st March 1950 stating that the defendants Nos.2 to 5 in the suit noted in the margin have filed an appeal No.7 of 1950 in the Court of the District Judge Bijapur and that if the Government desires to support the orders of the Revenue Authorities, then to sanction the defence of the said appeal.

In the Court of the Civil Judge (Senior Division), Bijapur.
Civil Suit No.153 of 1948
Gangappa Muttappa Muttannawar.. Plaintiff
versus
The Province of Bombay and 4 others ... Defendants.
Claim Rs:

Memorandum to the District Government Pleader, Bijapur No.3921 dated 20th March 1950.

Letter from the Collector of Bijapur No.L.A.W.185 dated 5th July 1950 stating that the plaintiff in the suit noted in the margin has filed a cross appeal in the appeal No.7 of 1950 in the court of the District Judge, Bijapur and requesting Government's sanction to its defence.

RESOLUTION :- Sanction is accorded to the defence of the Civil Appeal No.7 of 1950 in the Court of the District Judge, Bijapur on the lines of the brief accompanying Government Resolution, Legal Department No.7180 dated 29th June 1949.

2. Sanction is also accorded to the defence of the cross objections filed by the plaintiff in the suit noted in the margin.

By order of the Governor of Bombay,
original R.M.Mehta
R.M.Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Collector of Bijapur,
The Commissioner, Southern Division,
The District Government Pleader, Bijapur

and to remove the low-lying front Katta to the east of the mosque close to it. Costs throughout may kindly be awarded.

Bijapur.
21-6-1950.

Sd. V.V.Mudholkar
Sd. S.G.Managoli.
Pleader for respondent no.1.

Received on 23-6-1950.
Sd.
Dist.Govt.Pleader,Bijapur

" True Copy "

Dist. Govt.Pleader,Bijapur

Civil appeal No. 7 of 1950.

Order.

Cross objections are dismissed. Appeal is partially allowed and the decree of the trial court is modified by dismissing the plaintiff's claim for pulling ~~from~~ down the wall at G.H. It is decared that the public has a right to pass by the passage G.H.J.I and K.C.A.M. The decree granting to putt down the tree at F stands. The mandatory injunction is given against the defendants in respect of the pulling down the wall at A.M. The wall at A.M. and the tree at F shall be pulled down by the defendant within a month from today. If the defendant did not do it, the plaintiff can get the work done by filing the Darkhast and recover the costs thereof from the defendant. Parties to bear their own costs both in the lower court and of this court.

30th August 1951.

Sd.
District Judge

IN THE DISTRICT COURT OF BIJAPUR.

AT BIJAPUR.

Appeal No.7 of 1950 from Decree in
Civil Suit No.153 of 1948 of the Court of the
Civil Judge(Sr.Dn) of Bijapur(Shri A.C.Sequiera).

Pleaders.

Shri K.A. Janavekar.

1.(Hire-Masuti) Mosque at Managoli, village, Taluka Bagewadi, District Bijapur represented by the Muslim community by appellant No.2.

2. Hasansaheb Navajsaheb Attar

3. Lalhusensaheb Shalisaheb Mujawar.

4. Bandgisaheb Kashimsaheb Mulla. appellants Original defts 2 to 5).

Vs.

Shri S.G.Mangoli
" V.V.Mudholkar
for No.1.

1. Gangappa Muttappa Muttapanavar alias Managoli.

Govt.Pleader for No.2.

2. The Government of Bombay Province. Respondents (Original plff) and deft No.1).

Claim Rs.210 for both purposes.

This is a defendants Nos. 2 to 5's appeal from a decree granting the plaintiff's prayer for removal of obstruction on alleged public ways belonging to Government.

2. The suit, the decree in which is under appeal, is a representative suit filed by the plaintiff as representing the Hindu Community as against a Mosque represented by defendants Nos. 2 to 5 who are made parties as representing the Muslim Community of the village.The Bombay State is also impleaded as defendant No.1.

3. The facts of the case are these: In a village Mangoli there is a Mosque described by the plaintiff as Hire-Masuti and which the defendant described as Jumma Masid.A reference to the map drawn by the lower court in its Judgment would be

necessary for understanding the situation.At the same time, Map(Exh.58)(drawn on the bais of Gharbasti map, 1874) and Exh. 48 drawn by the plaintiff may also be referred to with advantage.

4. House No.128 is shown in the Gharbasti map of 1874 as Masid.But it is no longer in dispute that at present, the Masidi stands on Houses Nos. 126 and 127 and 128. House No.129 once belonged to a Kulkarni, the father of Shrinivas, (Exh.91) It was sold by him to the Moasque by a sale-deed (Exh.49) dated October 28, 1933,.House Nos. 130,131,132 and 133 once belonged to the members of the Mulla family.It is no longer in dispute that they are now in possession of the Mashid and a Katta has been constructed in place of house Nos. 130,131 and 132.

5. House No.125 belongs to the plaintiff and house No.124, (to the north of it) which once belonged to one Gurappa Bin Yellappa is now on open space admittedly owned by the Government.To the east of No.124 and No.125 at a distance of about 5-6 feet ffom the eastern wall of house No.125 is a big public well which has steps. Those steps are admittedly just to the east of the eastern boundary of No.124.The plaintiff's case was that this was a Hindu well having images of Ganapati and Maruti therein. The defendants& case was that it was a Mashid well. But there is no doubt that the well is a public well which can be used by all the sections of the public, irrespective of the caste and creed.

5. The present dispute is regarding the right of the Public to pass by the alleged passage G H J I which is between No.125 and the well on the one side and Nos.126,132 and 133 on the other; as also by the alleged passage K C A M which is between the western wall of the well and house No. 125.There is also a dispute about the site to the east of house Nos. 126,127,128 and 129 upto the western boundary of house Nos. 138,137 and 136.The whole of it now appears to have been included in house No.192 as if it is part of mosque property and that the enclosure is made on behalf of the mosque.

6. The plaintiff was an Inspector of Police in Service.He retired in 1937 and came to the village on January 16, 1942, he made an application to the Prant Officer alleging that the site K C A M to the east of his house No.125 belonged to him; and that the defendants had planted a Bor tree(at point F in the map in the lower court's judgment) which affected the use of his property.On February 12, 1942, the Mamlatdar ordered the tree should be cut(See Exh.54).The defendants then made an application the Prant Officer contending that the suit site was theirs and praying that the treex should not be cut.The Prant Officer issued notices to the Plaintiff and the defendants under section 37 of the Land Revenue Code, heard both the parties, took evidence and on June 25,1943, passed an order (Exh.51) holding that the site on which the tree stood belong to the defendants.
The plaintiff's appeal to the Collector was dismissed on June 25, 1946(Exh.52).The plaintiff preferred an appeal to the Commissioner, who by his order (Exh. 93) dated April 24, 1947 confirmed the Collector's order and referred the plaintiff to a Civil ~~Courtx~~ suit.

7. The plaintiff gave notice to the Government under section 80 of the C.P.Code intimating his intention to file a suit(See acknowledgementExh.94), and finally on April 19,1948, he has brought the present suit for declarations, and injunctions.The reliefs that he has claimed may be briefly summed up as follows:(1) Declaration that the Public have a right of way by the Public road G H J I and M K C A,(2) declaration that the whole area to the east of house Nos. 126,127,128 and 129, not excluding house Nos. 130,131,132 and 133 is Government Property wrongly encroached upon by the defendants.(3) Injunction that the obstructions that may prevent the public from making use of the two passages G. H J I and M K C I should be removed (other the pltff wants in the wall at G.H should be pulled down and also the wall connecting the two points M A in the map in the lower court's judgment) and that the Bor tree should be cut.

(4) The enclosure made by the defendants by extending to the east the southern wall of house No.129 and by constructing a wall south-north at a point to the east of the eastern wall of No.192 should be made available to the Public(by pulling down the wall which is shown by dotted lines in the map Exh. 48 prepared by the plaintiff). It is also alleged that the plaintiff has a right of easement over K C A M by passing through the passage G H J I.

8. The W.S. of defendants Nos. 2 to 5 is at Exh. 21. Their contentions are these: There is no encroachment and all spaces claimed as Government spaces are the property belonging to the Mosque.The Public have no right to pass by G H J I or M K C A which are part of the Mosque property. All these sites are in possession of the Masque for over 60 years; and even supposing they did not originally belong to the Mosque, they have become mosque property by adverse possesssion.The plaintiff has no easementary right.

9. Defendant No.1's W.S. is Exh. 27 whereby he supports defendants Nos. 2 to 5.

10. The learned trial Judge held that G H J I and K C A M were public ways and granted injunctions for keeping them free for public use without obstruction.That means he gave an injunction for pulling down the wall at G.H and the wall at A M.He also ordered that the Bor tree be cut.Regarding the space to the east of Nos. 126,127,128 and 129, he has not granted any reliefs saying that there was no cause of action in respect thereof. Against this decree, defendants Nos. 2 to 5 have come up in appeal and the plaintiff has filed cross-objections.

11. The points that arise out of the appeal and cross objections are these:-

(1) Whether the passage G H J I is a public way ?

(2) Whether the wall at G H has been newly constructed and must be pulled down ?

(3) Whether K C M A is a public passage ?

(4) Whether the wall at M A has been recently constructed and must be pulled down and whether the Bor tree at F should be ordered to cut ?

(5) Whether the area to the east of house Nos. 126 to 128 is a public space available as passage to the public ?

(6) Whether that space should be made available to the public by ordering the defts to pull down the wall to the south of No.129 joined to the southern wall of house No.192 and continued further to house No.129 as also the wall south-north constructed at that point.

12. My findings are in the affirmative on points Nos. 1,3 and 4 and in the negative on point No.2. As regards points Nos. 5 and 6, my finding is in the negative. I have come to these conclusions for the following reasons:

13. It is not in dispute that the well in question is a public well.All the sections of the public have a right to make use of it, as stated above.A reference to the sketch drawn by the lower court is its Judgment as also the Maps(Exhs.48 and 58) would be necessary for under--standing the facts and situations. The situations became clearer to me when I personaly inspected the site in the presence of the parties and their pleaders and I must say that I could understand the evidence better after making the local inspection.The learned trial Judge has also made a local inspection and he says that his decision is influenced by it.I must make it clear that I have not allowed my decision to be influenced by the local inspection which I made use of only for understanding evidence in the case.

14. After going through the evidence, hearing the elaborate arguments on either side and making the local inspection, I could not avoid the impression that the dispute in this case is more sentimental then real.It has begun with the Bor tree at point F and the plaintiff's

right to go on the open space on which it stands and gradually assumed the status of a representative suit by one community against the other. I thought that it was a fit case for amicable settlement.So I requested both the parties just to see whether they could come to terms.But I am told that it was not possible.So I am writing this Judgment to-day about 8 days after hearing the arguments and making the local inspection.

15. The main documents on which the learned trial Judge has relied upon are the Gharbasti map(Exh.58) and the Yadi of house(Exh.95) Both these documents are of the year 1874. Exh.58 is a copy of the relevant portion of the original map which was produced by the Record Keeper of the District Survey Office(Exh.57) and taken back by him.The Record Keeper (Ex.57, has explained that map.According to that map, as explained by the Record Keeper (Exh.57) there was a road to the south of the well.That means that there was a road at G H J I, in the sketch in the lower Court's Judgment. It is urged on behalf of the appellants by their learned pleader that this map is not admissible in evidence. He says that it is not a public map or a charter generally offered for public sale nor is it a map or a plan made under the authority of the Government as required under section 36 of the Indian Evidence Act. It is true that there is no evidence that the said map was generally offered for public sale.But it has been prepared by the Survey Department according to the rules made by Wingate. Rule 38 of Chapter 12 of those rules runs as follows:-

> " A statistical return of the houses, inhabitants, and cattle, according to Form No.6, a plan of the houses according to Form No.7, and a statement of the description of each house, according to Form No. 8, should be drawn out for each village classified ".

The map produced is admittedly according to Form No.7 given therein.This map has been drawn not in a particular case but has been drawn as a result of a scheme to draw maps of this kind in respect of all the villages.This was done presumably under the authority of the Government and there-fore I think that the said Map is relevant under section 36 and

that it must be presumed to be correct under section83 of the Evidence Act.According to that map the area in questic is not shown to belong to an individual.According to the Record Keeper,it was a road.though he cannot say although it is a public road.Besides it abuts the wall of the well on the south and it is just natural that when the well wasconstructed, some open space for the public to goround the well must have been kept.I therefore hold in concurr--ance with the learned trial Judge that the passage G H J I is a public passage over which the whole public has a right to pass.

16. The second question would be whether the wallat G H is a new wall and should be pulled down.On this point, it may be noted that even in the Charbasati map (Exh. 58) there is a line at G H showing that there was wall there and that there was no exit on that side.So this document negatives the plff's case that there was no wall befo.e and that it has been recently constructed by the defendants. The evidance for the plaintiff is that that wall was constructed by the defts about 10-12 years back.But assuming that what the plff's witnesses say is true, it does not mean that there was no wall. before. For ought we know, in place of the old wall which might be dilapidated, the new wall might have been constructed by the defendants.It is next urged for the respondents that there is no point in saying that G.H J I is a public passage without there being an opening at G H.But there is nothing to prevent a blind lane being called a public passage.It may be that at one time persons in the eastern locality might be coming through the passage at I J and going to the well. Of Course that question does not now arise, because at present, the western walls of House Nos. 116 and 136 have been joined and it is not possible for persons in that locality to come to the well by the passage at J I. I asked the learned pleader for the respondents what he

has to say about it.But he has no explaination to give. He says that the public can go to the well from the passage to the south of house No.129 and then to the east of No.129 (See the map Exh.58).This question I will consider when dealing points Nos. 5 and 6.But since there was a wall at G.H as shown in the Gharbasti map of 1874, I do not think that a right of passage from G H is established by the plaintiff, so that I can order the defendants to pull down the wall at G H.

17. This takes me to the strip K C M A.It is argued for the appellantx that this passage is not shown in the Charbasti map(Exh.58).But that does not mean that there was no passage there.That map (Exh.58) shows the entire areas to the east of house No.125 as part of the well.I am not inclined to believe that the western wall of the well would have touched the eastern wall of house No.125. So it is reasonable to suppose that some space was left between the eastern wall of No.125 and the western wall of the well i.e.K.C.A.M.It is also natural to suppose that when people go to the passage IJHG, there must be some space for them to get into the well, and that passage must be K C A M. It is urged for the appellants that the steps of the well come up to the eastof house No.124 and that people were passing through No.124 to the well and that there was no necessity of passage through K C A M.It is true that No.124 is now an open site and that since the childhood of the plaintiff who is now aged 62, people go to the well passing across No.124 which is Government property, as admitted by the plaintiff(Exh.47), in paras 23 and 24. But that does not matter much; because for persons coming by I J, the passage through No.124 would be extremely Circuitous.It is argued for the respondents that in 1874, house No.124 was used by one Gurappa Bin Yellappa as the list of houses (Exh.95) would show, and that there could be no access to the well through No.124. But it may be that some space to the north or south of No.124 might have been left for the public to go to the well, the stpps of which are north-south and which touch the eastern boundary of No.124. The maps in the case show as if the east-west breadth of 124 is very great and that the steps of the well are much remote from the public road to the east of No.124.But that

wrong idea is corrected immediately one goes to the place. If one goes to the road on the west of No.124 and standsthere, he finds that the steps of the well are hardly of a few paces there from.Although there was one shop in No.124, it is not improbable that there might be some passage left there to the north or south of No.124 for reaching the well.It is no-bodyds case that the Charbasti map shows even small passages left within the boundary of the private house also.But all this discussion is not material. In my opinion,K C A M is a public passage; and to speak the least, it must have been there for the public to pass round the well.So I uphold the finding of the lower cuurt on this point.

18. The plaintiff's case is that the defendants planted a Bor tree about 13-14 years back, and also constructed a wall east-west at M A and thereby obstructed the use of the public passage K C A M.It is also his case that the leaves of the tree fall into the well and spoil water.There is no doubt in my mind that the wall at M A, which is a mud wall, has been recently constructed by the defendants.I believe the plaintiff and his witnesse's when they say so. In my opinion the defendants have done this for enclosing the whole area into their compound. This they cannot be allowed to do.So a mandatory injunction must be given for cutting the tree at F and pulling down the wall at M A.

19. On the question regarding the space to theeast of No.125 to 128 and 129, I must say that the plaintiff has exaggerated his claim beyond all proportion.It is to much to say that Nos. 130,131,132 and 133, and house No.192, are spaces belonging to Government, throughwhich the public had a right to pass.The list of houses prepared in 1874(Exh.95) shows that Nos. 130 to 135 belong to the Mullas and No.192 to one Chanmallappa Irayya.Those properties are now admittedly in possession of the defendants.It may be that they might have acquired those properties by some lawful means or they might have encroached upon upon some of these properties

and become owners by adverse possession. We are not concerned with how the defendants got possession of those properties.The real question is whether in the first place the plffs prove that the said space is of the Government and secondly that they have a right to pass through them. So far as properties Nos. 130,131,132,133 and 192 are concerned, they admittedly belonged to the private individuals. Some property in between, such as the space to the south of No.129, to the east of No.129 and to the north of No.192 and to the east of No.133 appears from the map.(Exh.58) to have belonged to no private individuals.So those spaces may be Government property according to the presumption under section 37 of the Land Revenue Code.But what evidnnce is there to show that the public were passing by that way ?.It may be that the defendants have encorached upon that area and included it in the whole compund which now appears as if it is a compund of the mosque.But it is for the Government to take stpes inthat behalf if they feel that their area has been encroached upon. The public have no right to take exception to the act of the defendants unless they show that the public had rightto go through it and that that right has been voilated by the actx of the defendants to their inconvenience.

20. But there is no satisfactory evidence on the point. Some oral evidence has been led by the plaintiff. He has examined himself (Exh.47), the village Kulkarni (Exh.67), Sangappa, (Exh.68),Mahantayya(Exh.69) and Mallappa(Exh.75) Kulkarni speaks about the space round about the well and I believe him, when he says so. He speaks nothing about the questions that we are now considering.Sangappa (Exh.68) says that the mosque has no comppund wallwhich is not correct. Mahantayya (Exh.69) says that to the east of the mosque, there was an open space used by the Public.This is obviously false. Mallappa is the brother of the plintiff; and he is interested and I do not think that the witness is telling the truth. I have read the evidence of all the witnesses and I find

that I cannot believe them on this point.Besides I do not think it convenient for the people to go from the south of No.129 or No.130 to the well; a person has first to go in a zigzag way as far as I J, then to go near the pully where the pas age has become very narrow, and thereafter to get down on the steps facing the east of No.124 by getting down from the space near M A.The better course for them is by going by the main road to the west of Nos. 129,128,127,126 and 125 and then going through No.124 which is an open space.In this way this is not a fit case for ordering the walls for being pulled down, firstly because the right to the space to the east of the mosque is not established by the plaintiff and secondly because the claim made by the plaintiff will not promote the convenience of the public, ~~xxxxxx~~ a factor which by all means can be taken into account in using the description in granting or refusing mandatory injunction.

21. For these reaons, I dimiss the cross objections and partly allow the appeal in so far as the pulling down the wall at G H is concerned.In ~~xxxxx~~ other respects, the decree of the trial Court stands.Looking to the measure of success and failure of the parties, I think that the parties should bear their own costs of both the courts.

Order.

Cross objections are dmissed. The appeal is partly allowed and the decree of the trial court is modified by dismissing the plaintiff's claim for pulling down and wall at G.H.It is declared that the Public has a right to pass by the passage G H J I and K C A M.The decree granting the cutting of the Bor tree at F stands. A mandatory injunction is given against the defendants in respect of pulling down the wall at A.M.The wall at A M and the tree at F shall be pulled down and cut respectively by the defendants within a month from today. If they fail to do so, the plaintiff can get the work done through court by filing a Darkhast

and recover the costs thereof from the defendants No.2 to 5.

Parties to bear their own costs both in the Court below and of this Court.

31st August 1951. Sd.N.S.Shrikhande.

District Judge.

"True Copy"

Suits
Bijapur,
Encroachment on Government land.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1558.
Bombay Castle, 28th September 1951.

Read Government Resolution, Legal Department No. 9965, dated the 14th July 1950.

Endorsement from the District Government Pleader, Bijapur No. 696, dated the 9th September 1951, stating that the appeal No. 7 of 1950 in the suit noted in the margin was decided by the District Judge, Bijapur on 31st August 1951, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Bijapur. Civil Suit No. 153 of 1948. Gangappa Muttappa Muttannawar ....Plaintiff vs. The Province of Bombay and 4 others. ... .Defendants. Claim Rs.	No. 696, dated the 9th September 1951, stating that the appeal No. 7 of 1950 in the

"Cross objections are dismissed. The appeal is partly allowed and the decree of the trial court is modified by dismissing the plaintiff's claim for pulling down and wall at G.H. It is declared that the Public has a right to pass by the passage G H J I and K C A M. The decree granting the cutting of the Bor tree at F stands. A mandatory injunction is given against the defendants in respect of pulling down the wall at A.M. The wall at A M and the tree at F shall be pulled down and cut respectively by the defendants within a month from to-day. If they fail to do so, the plaintiff can get the work done through court by filing a Darkhast and recover the costs thereof from the defendants No.2 to 5.
Parties to bear their own costs both in the Court below and of this Court."

Endorsement from the District Government Pleader, Bijapur No. 728, dated the 19th September 1951, forwarding uncertified copies of the judgment and decree.

RESOLUTION: - The result of the appeal is recorded.

By order of the Governor of Bombay,

R. T. Katarki,
Deputy Secretary to Government.

Issued 28/9 original
Record & Rpt
28/9

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Salisbury

GOVERNMENT OF RHODESIA.
Legal Department,
Treasury Building,
Salisbury, S. Rhodesia.

Head Government Messenger, Legal Department

Messenger to deliver the following letter to the Secretary, Native Department, Salisbury.

Secretary, Native Department

Please deliver the following letter to the Collector of Native Taxes, Salisbury.

Collector of Native Taxes

Please deliver the following letter to the Native Commissioner, Salisbury.

Native Commissioner

Re: Application for Certificate of Exemption from Native Tax

Sir,

I am directed to inform you that the Secretary for Native Affairs has approved of the issue of a Certificate of Exemption from Native Tax to Mr. Ndlovu Mpofu of Salisbury.

I am, Sir,
Your obedient servant,
for Secretary for Legal Department.

Salisbury,
5th September, 1950.

Ref. No. 3/5/2

Mr. Ndlovu Mpofu,
c/o Mr. Mpofu,
Salisbury.

Dear Sir,

I am directed to inform you that the Secretary for Native Affairs has approved of the issue of a Certificate of Exemption from Native Tax to you.

Please call at this office with your passport and the sum of £2.5.0 and you will be given a receipt and the Certificate of Exemption.

Yours faithfully,
for Secretary for Legal Department.

Ref. No. 3/5/2

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c/o Mr. Mpofu,
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Salisbury,
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Secretary, Native Department,
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Salisbury,
5th September, 1950.

Ref. No. 3/5/2

Liv. A 42 k.

ಹುಕುಮನಾಮೆಯು

ಸಿವಿಲ್ ಕೋರ್ಟಿನಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಡ್ಜ್ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಸಿವಿಲ್ ಕೋರ್ಟ್ ಇಲ್ಲಿ. ನಿಃ

KA. ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೯೯೫೦೦೦೦೦೦ ಪೈಕಿ

(1) (ತಿರ್ಕ ಮಾಡಿದ ಮೇಲೆ ನಿಮ್ಮ ಮೇಲಿನ ಕಾಗದ
ನಿಮ್ಮ ಬಿಗಿಸಿಕೊಂಡ ಪ್ರಮಾಣ ಕಾಗದ ಇವತ್ತು
ಅಂಚೆ ಲಂಬ. ನಂಬರ 2
(2) ಈ ಕಾಗದವು ನಿಮಗೆ ತಲಪಿದ ಮೇಲೆ ನೀವು
ಮೇಲಿನ ಸಂಗತಿಗಳ ಬಗ್ಗೆ ಒಬ್ಬ ವಕೀಲರನ್ನು
(3) ಇಗಲೆ ಈ ಕಾಗದ ನಿಮಗೆ ತಲಪಿದ ಮೇಲೆ
ನಮ್ಮ ಕಡೆಯ ವಕೀಲರು ಮೇಲಿನ ಸಂಗತಿಗಳ
ಬಗ್ಗೆ ಕೆಲಸ ಮಾಡಲು ನಿಮ್ಮ ಪರವಾಗಿ
(4) ಮೇಲಿನ ತಲೆನಿಮ್ಮ ಕೆಲಸ ಮಾಡಲು ನಿಮ್ಮ ಪರವಾಗಿ

ಅಪೀಲೆಂಟ (ಮೊದಲನೇ).

ರಿಸ್ಪಾಂಡೆಂಟ್ ಮೊದಲನೇ

ತಿರುಚ್ಚಿ (ಅಂಬಿ ನಾಲ್ಕನೇ ಮುನ್ಸಿಫ್) ಇಲ್ಲಿಯ ನಂಬರ್ ಸ್ಮಾಲ್ ಕಾಸ್ ಜಡ್ಜ್ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೪ನೇ

ಇಸವಿಯ ನಂಬರು ೧೪೫೦ರಲ್ಲಿ ತೀರ್ಮಾನ ೨೪ನೇ ನವೆಂಬರ್ ತಿಂಗಳ ಸನ್ ೧೯೪೫ನೇ

ಇಸವಿಯ ಹುಕುಮಾ ಆಗಿರುವ ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣವರ್ಲ ಒಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಅಂಚೆ ಲಂಬ. ಇವನು

ಸದರೀ ತಾರೀಖಿನ ಹುಕುಮು ನಾವಿರುವ ಮೇಲೆ ಸಿವಿಲ್ ಕೋರ್ಟ್ ಇಲ್ಲಿಯ

ಪ್ಲೀಡರ್, ಪಿಟಿಷನರ್ - ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೫ ಡಿಸೆಂಬರ್ ತಿಂಗಳನ ೨೧ನೇ ತಾರೀಖಿನ ದಿವಸ ಮೇಲೆ ನಮ್ಮ ಮುಂದೆ ಬಂದಿತು.

ಮುಂದೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ಮೇಲೆ. ಸಿ.ಕೆ. ವಾಸನ್ ಮತ್ತು ಎಸ್. ಎಸ್. ಕೃಷ್ಣಮೂರ್ತಿ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ

ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಮೇಲೆ. ಎಸ್. ಎಸ್. ವಾಸುದೇವನ್ ಮತ್ತು ಟಿ.ವಿ. ಸೀತಾರಾಮಯ್ಯರ್ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ

ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಒಂದಪ್ಪರೆ ಮೇಲಿಂದ ಇಲ್ಲಿಗೆ ಹುಕುಮು ಮಾಡಿದವರೆಲ್ಲ ಬರುತ್ತದೆಲ್ಲ—

ಮೇಲಿನ ಅಪೀಲೆಂಟರು ಸಲ್ಲಿಸಿದ ನಿವೇದನೆಯಲ್ಲಿ ಮೇಲಿನ ಸಂಗತಿಗಳ ಬಗ್ಗೆ ಸದರಿ ಸಿವಿಲ್ ಕೋರ್ಟಿನಲ್ಲಿ ಸಲ್ಲಿಸಿದ ಮೊಕದಮೆಯಲ್ಲಿ ಸದರಿ ಕೋರ್ಟಿನವರು ಮಾಡಿದ ತೀರ್ಮಾನವು ಸರಿಯಲ್ಲವೆಂದೂ ಸದರಿ ಮೊಕದಮೆಯಲ್ಲಿ ಸದರಿ ಕೋರ್ಟಿನವರು ಮಾಡಿದ ಡಿಕ್ರಿಯನ್ನು ರದ್ದು ಮಾಡಿ ಸದರಿ ಮೊಕದಮೆಯನ್ನು ಸದರಿ ಕೋರ್ಟಿನವರು ವಿಚಾರಣೆ ಮಾಡಿ ತೀರ್ಮಾನ ಮಾಡುವಂತೆ ಆಜ್ಞೆ ಮಾಡಬೇಕೆಂದೂ ಕೇಳಿಕೊಂಡಿರುತ್ತಾರೆ. ಸದರಿ ಅಪೀಲೆಂಟರ ಪರವಾಗಿ ಮೇಲೆ. ಸಿ.ಕೆ. ವಾಸನ್ ಮತ್ತು ಎಸ್. ಎಸ್. ಕೃಷ್ಣಮೂರ್ತಿ ಇವರು ಹಾಜರಾಗಿ ವಾದಿಸಿರುತ್ತಾರೆ. ಸದರಿ ರಿಸ್ಪಾಂಡೆಂಟರ ಪರವಾಗಿ ಮೇಲೆ. ಎಸ್. ಎಸ್. ವಾಸುದೇವನ್ ಮತ್ತು ಟಿ.ವಿ. ಸೀತಾರಾಮಯ್ಯರ್ ಇವರು ಹಾಜರಾಗಿ ವಾದಿಸ

(1) ...

(2) ...

ಶಿಕ್ಷೆ-ತಿಂಬರ

—X—

X. ಶಿಕ್ಷೆಯನ್ನು ಬೇಕಾಬಿಟ್ಟಿ ಮಾಡಲಾಗದು (ಶಿಕ್ಷೆಯಾಗಿ ತಡೆಯಾಜ್ಞೆ ನೀಡಿಕೆ. (Given mandatory injunction) ಇತರೆ ಸಂದರ್ಭಗಳಲ್ಲಿ ಅಂದರೆ ಅಂತಿಮ ಶಿಕ್ಷೆಯಾಗಿ ತಡೆಯಾಜ್ಞೆ ನೀಡಿಕೆಯನ್ನು ಕೋರಿದಾಗ

~~ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಜದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ~~

~~ರೂಪಾಯಿದಷ್ಟನ್ನು~~

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ	ರಿಸ್ಪಾಂಡೆಂಟ್.	ರಕಮು. ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	೧೯	-	-	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	-	೧೦	-
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ				೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	-	೧೦	-	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	೨	-	-	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ			
೫. —— ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫	-	-	೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫		
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	೨೦	೧೫	-	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	೬	೧೪	-
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫	-	-	೭. ಹರಕ್ಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು			
ಅ) ತೀರ್ಪಿನ ಬಾಬ್ತಿನ ಬಾಕಿ	೨೧	-	-	೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫	-	-
ಒಟ್ಟು....	೮೩	೧೫	-	ಒಟ್ಟು....	೪೦	೧೪	-

ಈ ಹೊತ್ತು ತಾರೀಖು ೩೦ ತಿಂಗಳು ಏಪ್ರಿಲ್ ಸನ್ ೧೯೩೭ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಅದೆ.

Signed by
Mr. C.M. Pollen
Advocate
for the
Appellant.

ಅಪೀಲೆಂಟ ವಕೀಲ.

ಸಹಿ N.S. Shirkhande
ಜಡ್ಜ.

ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

True copy.
Sd/- [illegible]
Clerk of the
Court.

[ಈ ಕೋರ್ಟಿನ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವವಾದರೂ ದಸ್ತಿವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತಿವಜುಗಳ ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಆದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

True copy.
Ahmedabad
D.G.P.

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IN THE DISTRICT COURT OF BIJAPUR.

AT BIJAPUR.

Appeal No.7 of 1950 from Decree in Civil Suit No.153 of 1948 of the Court of the Civil Judge(Sr.Dn) of Bijapur(Shri A.C.Mequiera).

Pleaders.

Shri K.A. Janavekar.

1.(Hire-Masuti) Mosque at Managoli, village, Taluka Bagewadi, District Bijapur represented by the Muslim community by appellant No.2.

2. Hasansaheb Navajsaheb Attar

3. Lalhusensaheb Shalisaheb Mujawar.

4. Bandgisaheb Kashimsaheb Mulla. appellants Original defts 2 to 5).

Vs.

Shri S.G.Mangoli
" V.V.Mudholkar
for No.1.

1. Gangappa Muttappa Muttapanavar alias Managoli.

Govt.Pleader for No.2.

2. The Government of Bombay Province. Respondents (Original plff) and deft No.1).

Claim Rs.210 for both purposes.

This is a defendants Nos. 2 to 5's appeal from a decree granting the plaintiff's prayer for removal of obstruction on alleged public ways belonging to Government.

2. The suit, the decree in which is under appeal, is a representative suit filed by the plaintiff as representing the Hindu Community as against a Mosque represented by defendants Nos. 2 to 5 who are made parties as representing the Muslim Community of the village.The Bombay State is also impleaded as defendant No.1.

3. The facts of the case are these: In a village Mangoli there is a Mosque described by the plaintiff as Hire-Masuti and which the defendant described as Jumma Masid.A reference to the map drawn by the lower court in its Judgment would h

necessary for understanding the situation.At the same time, Map(Exh.58)(drawn on the bais of Gharbasti map, 1874) and Exh. 48 drawn by the plaintiff may also be referred to with advantage.

4. House No.123 is shown in the Gharbasti map of 1874 as Masid.But it is no longer in dispute that at present, the Masidi stands on Houses Nos. 126 and 127 and 128. House No.129 once belonged to a Kulkarni, the father of Shrinivas, (Exh.91) It was sold by him to the Moasque by a sale-deed (Exh.49) dated October 28, 1933,.House Nos. 130,131,132 and 133 once belonged to the members of the Mulla family.It is no longer in dispute that they are now in possession of the Mashid and a Katta has been constructed in place of house Nos. 130,131 and 132.

5. House No.125 belongs to the plaintiff and house No.124, (to the north of it) which once belonged to one Gurappa Bin Yellappa is now on open space admittedly owned by the Government.To the east of No.124 and No.125 at a distance of about 5-6 feet ffom the eastern wall of house No.125 is a big public well which has steps. Those steps are admittedly just to the east of the eastern boundary of No.124.The plaintiff's case was that this was a Hindu well having images of Ganapati and Maruti therein. The defendants& case was that it was a Mashid well. But there is no doubt that the well is a public well which can be used by all the sections of the public, irrespective of the caste and creed.

5. The present dispute is regarding the right of the Public to pass by the alleged passage G H J I which is between No.125 and the well on the one side and Nos.126,132 and 133 on the other; as also by the alleged passage K C A M which is between the western wall of the well and house No. 125.There is also a dispute about the site to the east of house Nos. 126,127,128 and 129 upt the western boundary of house Nos. 138,137 and 136.The whole of it now appears to have been included in house No.192 as if it is part of mosque property and that the enclosure is made on behalf of the mosque.

6. The plaintiff was an Inspector of Police in Service. He retired in 1937 and came to the village on January 16, 1942, he made an application to the Prant Officer alleging that the site K C A M to the east of his house No.125 belonged to him; and that the defendants had planted a Bor tree(at point F in the map in the lower court's judgment) which affected the use of his property. On February 12, 1942, the Mamlatdar ordered the tree should be cut(See Exh.54). The defendants then made an application the Prant Officer contending that the suit site was theirs and praying that the trees should not be cut. The Prant Officer issued notices to the Plaintiff and the defendants under section 37 of the Land Revenue Code, heard both the parties, took evidence and on June 25,1943, passed an order (Exh.51) holding that the site on which the tree stood belong to the defendants. The plaintiff's appeal to the Collector was dismissed on June 25, 1946(Exh.52). The plaintiff preferred an appeal to the Commissioner, who by his order (Exh. 93) dated April 24, 1947 confirmed the Collector's order and referred the plaintiff to a Civil suit.

7. The plaintiff gave notice to the Government under section 80 of the C.P.Code intimating his intention to file a suit(See acknowledgementExh.94), and finally on April 19,1948, he has brought the present suit for declarations, and injunctions. The reliefs that he has claimed may be briefly summed up as follows:(1) Declaration that the Public have a right of way by the Public road G H J I and M K C A,(2) declaration that the whole area to the east of house Nos. 126,127,128 and 129, not excluding house Nos. 130,131,132 and 133 is Government Property wrongly encroached upon by the defendants.(3) Injunction that the obstructions that may prevent the public from making use of the two passages G. H J I and M K C I should be removed(that is, the wall G H should be pulled down and also the wall connecting the two points M A in the map in the lower court's judgment) and that the Bor tree should be

(4) The enclosure made by the defendants by extending to the east the southern wall of house No.129 and by constructing a wall south-north at a point to the east of the eastern wall of No.192 should be made available to the Public(by pulling down the wall which is shown by dotted lines in the map Exh. 48 prepared by the plaintiff). It is also alleged that the plaintiff has a right of easement over K C A M by passing through the passage G H J I.

8. The W.S. of defendants Nos. 2 to 5 is at Exh. 21. Their contentions are these: There is no encroachment and all spaces claimed as Government spaces are the property belonging to the Mosque.The Public have no right to pass by G H J I or M K C A which are part of the Mosque property. All these sites are in possession of the Masque for over 60 years; and even supposing they did not originally belong to the Mosque, they have become mosque property by adverse possesssion.The plaintiff has no easementary right.

9. Defendant No.1's W.S. is Exh. 27 whereby he supports defendants Nos. 2 to 5.

10. The learned trial Judge held that G H J I and K C A M were public ways and granted injunctions for keeping them free for public use without obstruction.That means he gave an injunction for pulling down the wall at G.H and the wall at A M.He also ordered that the Bor tree be cut.Regarding the space to the east of Nos. 126,127,128 and 129, he has not granted any reliefs saying that there was no cause of action in respect thereof. Against this decree, defendants Nos. 2 to 5 have come up in appeal and the plintiff has filed cross-objections.

11. The points that arise out of the appeal and cross objections are these:-

(1) Whether the passage G H J I is a public way ?

(2) Whether the wall at G H has been newly constructed and must be pulled down ?

(3) Whether K C M A is a public passage ?

right to go on the open space on which it stands and gradually assumed the status of a representative suit by one community against the other. I thought that it was a fit case mfor amicable settlement.So I requested both the parties just to see whether they could come to terms.But I am told that it was not possible.So I am writing this Judgment to-day about 8 days after hearing the arguments and making the local inspection.

15. The main documents on which the learned trial Judge has relied upon are the Gharbast map(Exh.58) and the Yadi of house(Exh.95) Both these documents are of the year 1874. Exh.58 is a copy of the relevant portion of the original map which was produced by the Record Keeper of the District Survey Officer(Exh.57) and taken back by him.The Record Keeper (Ex.57) has explained that map.According to that map, as explained by the Record Keeper (Exh.57) there was a road to the south of the well.That means that there was a road at G H J I, in the sketch in the lower Court's Judgment. It is urged on behalf of the appellants by their learned pleader that this map is not admissible in evidence. He says that it is not a public map or a charter generally offered for public sale nor is it a map or a plan made under the authority of the Government as required under section 36 of the Indian Evidence Act. It is true that there is no evidence that the said map was generally offered for public sale.But it has been prepared by the Survey Depaxtment according to the rules made by Wingate. Rule 38 of Chapter 12 of those rules runs as follows:-

> A statistical return of the houses, inhabitants, and cattle, according to Form No.6, a plan of the houses according to Form No.7, and a statement of the description of each house, according to Form No. 8, should be drawn out for each village classified ".

The map produced is admittedly according to Form No.7 given therein.This map has been drawn not in a particular case but has been drawn as a result of a scheme to draw maps of this kind in respect of all the villages.This was done presumably under the authority of the Government and therefore I think that the said Map is relevant under section 36 and

(4) Whether the wall at M A has been recently constructed and must be pulled down and whether the Bor tree at F should be ordered to cut ?

(5) Whether the area to the east of house Nos. 126 to 128 is a public space available as passage to the public ?

(6) Whether that space should be made available to the public by ordering the defts to pull down the wall to the south of No.129 joined to the southern wall of house No.192 and continued further to house No.129 as also the wall south-north constructed at that point.

12. My findings are in the affirmative on points Nos. 1,3 and 4 and in the negative on point No.2. As regards points Nos. 5 and 6, my finding is in the negative. I have come to these conclusions for the following reasons:-

13. It is not in dispute that the well in question is a public well. All the sections of the public have a right to make use of it, as stated above. A reference to the sketch drawn by the lower court is its Judgment as also the Maps (Exhs.48 and 58) would be necessary for under--standing the facts and situations. The situations became clearer to me when I personaly inspected the site in the presence of the pa ties and their pleaders and I must say that I could understand the evid nce better after making the local inspection. The learned trial Jud e has also made a local inspection and he says that his decision is influenced by it. It must make it clear that I have not allowed my decision to be influenced by the local inspection which I made use of only for understanding evidence in the case.

14. After going through the evidence, hearing the elaborate arguments on either side and making the local inspection, I could not avoid the impression that the dispute in this case is more sentimental than real. It has begun with the Bor tree at point F [illegible] the plaintiff's

that it must be presumed to be correct under section83 of the Evidence Act.According to that map the area in questio is not shown to belong to an individual.According to the Record Keeper,it was a road,though he cannot say although it is a public road.Besides it abuts the wall of the well on the south and it is just natural that when the well unstonstructed, some open space for the public to go round the well must have been kept.I therefore hold in concurr--ance with the learned trial Judge that the passage G H J I is a public passage over which the whole public has a right to pass.

16.- The second question would be whether the wallat G H is a new wall and should be pulled down.On this point, it may be noted that even in the Charbasati map (Exh. 58) there is a line at G H showing that there was wall there and that there was no exit on that side.So this document negatives the plff's case that there was no wall befo e and that it has been recently constructed by the defendants. The evidence for the plaintiff is that that wall was constructed by the defts about 10-12 years back.But assuming that what the plff's witnesses say is true, it does not mean that there was no wall, before. For ought we know, in place of the old wall which might be dilapidated, the new wall might have been constructed by the defendants.It is next urged for the respondents that there is no point in saying that G.H J I is a public passage without there being an opening at G H.But there is nothing to prevent a blind lane being called a public passage.It may be that at one time persons in the eastern locality might be coming through the passage at I J and going to the well. Of Course that question does not now arise, because at present, the western walls of House Nos. 116 and 136 have been joined and it is not possible for persons in that locality to come to the well by the passage at J I I asked the learned pleader for the respondents what h

has to say about it.But he has no explaination to give. He says that the public can go to the well from the passage to the south of house No.129 and then to the east of No.129 (See the map Exh.58).This question I will consider when dealing points Nos. 5 and 6.But since there was a wall at G.H as shown in the Gharbasti map of 1874, I do not think that a right of passage from G H is established by the plaintiff, so that I can order the defendants to pull down the wall at G H.

17. This takes me to the strip K C M A.It is argued for the appellantx that this passage is not shown in the Charbasti map(Exh.58).But that does not mean that there was no passage there.That map (Exh.58) shows the entire areas to the east of house No.125 as part of the well.I am not inclined to believe that the western wall of the well would have touched the eastern wall of house No.125. So it is reasonable to suppose that some space was left between the eastern wall of No.125 and the western wall of the well i.e.K.C.A.M.It is also natural to suppose that when people go to the passage IJHC, there must be some space for them to get into thewell, and that passage must be K C A M. It is urged for the appellants that the steps of the well come up to the eastof house No.124 and that people were passing through No.124 to the well and that there was no necessity of passage through K C A M.It is true that No.124 is now an open site and that since the childhood of the plaintiff who is now aged 62, people go to the well passing across No.124 which is Government property, as admitted by the plaintiff(Exh.47), in paras 23 and 24. But that does not matter much; because for persons coming by I J, the passage through No.124 would be extremely Circuitous.It is argued for the respondents that in 1874, house No.124 was used by one Gurappa Bin Yellappa as the list of houses (Exh.95) would show, and that there could be no access to the well through No.124. But it may be that some space to the north or south of No.124 might have been left for the public to go to the well, the stpps of which are north-south and which touch the eastern boundary of No.124. The maps in the case show as if the east-west breadth of 124 is very great and that the steps of the well are much remote from the public road to the west of No.124.But that

wrong idea is corrected immediately one goes to the place. If one goes to the road on the west of No.124 and standsthere, he finds that the steps of the well are hardly of a few paces there from.Although there was one shop in No.124, it is not improbable that there might be some passage left there to the north or south of No.124 for reaching the well.It is no-bodyis case that the Charbasti map shows even small passages left within the boundary of the private house also.But all this discussion is not material. In my opinion,K C A M is a public passage; and to speak the least, it must have been there for the public to pass round the well.So I uphold the finding of the lower court on this point.

18. The plaintiff's case is that the defendants planted a Bor tree about 13-14 years back, and also constructed a wall east-west at M A and thereby obstructed the use of the public passage K C A M.It is also his case that the leaves of the tree fall into the well and spoil water.There is no doubt in my mind that the wall at M A, which is a mud wall, has been recently constructed by the defendants.I believe the plaintiff and his witnesses when they say so. In my opinion the defendants have done this for enclosing the whole area into their compound. This they cannot be allowed to do.So a mandatory injunction must be given for cutting the tree at F and pulling down the wall at M A.

19. On the question regarding the space to theeast of No.125 to 128 and 129, I must say that the plaintiff has exaggerated his claim beyond all proportion.It is to much to say that Nos. 130,131,132 and 133, and house No.192, are spaces belonging to Government, throughwhich the public had a right to pass.The list of houses prepared in 1874(Exh.95) shows that Nos. 130 to 135 belong to the Mulla and No.192 to one Ghanmallappa Irayya.Those properties are now admittedly in possession of the defendants.It may be that they might have acquired those properties by some lawful means or they might have encroached upon upon some of these properti

and become owners by adverse possession. We are not concerned with how the defendants got possession of those properties.The real question is whether in the first place the plffs prove that the said space is of the Government and secondly that they have a right to pass through them. So far as properties Nos. 130,131,132,133 and 192 are concerned, they admittedly belonged to the private individuals. Some property in between, such as the space to the south of No.129, to the east of No.129 and to the north of No.192 and to the east of No.133 appears from the map.(Exh.58) to have belonged to no private individuals.So those spaces may be Government property according to the presumption under section 37 of the Land Revenue Code.But what evidnnce is there to show that the public were passing by that way ?.It may be that the defendants have encorached upon that area and included it in the whole compund which now appears as if it is a compund of the mosque.But it is for the Government to take stpes inthat behalf if they feel that their area has been encroached upon. The ,ublic have no right to take exception to the act of the defendants unless they show that the public had rightto go through it and that that right has been voilated by the actx of the defendants to their inconvenience.

20. But there is no satisfactory evidence on the point. Some oral evidence has been led by the plaintiff. He has examined himself (Exh.47), the gillage Kulkarni (Exh.67), Sangappa, (Exh.68),Mahantayya(Exh.69) and Mallappa(Exh.75) Kulkarni speaks about the space round about the well and I believe him, when he says so. He speaks nothing about the questions that we are now consid ering.Sangappa (Exh.68) says that the mosque has no comppund wallwhich is not correct. Mahantayya (Exh.69) says that to the east of the mosque, there was an open space used by the Public.This is obviously false. Mallappa is the brother of the plintiff; and he is interested and I do not think that the witness is telling the truth. I have read the evidence of all the witnesses and I find

that I cannot believe them on this point. Besides I do not think it convenient for the people to go from the south of No.129 or No.130 to the well; a person has first to go in a zigzag way as far as I J, then to go near the pully where the pas age has become very narrow, and thereafter to get down on the steps facing the east of No.124 by getting down from the space near M A. The better course for them it by going by the main road to the west of Nos. 129,128,127,126 and 125 and then going through No.124 which is an open space. In this way this is not a fit case for ordering the walls for being pulled down, firstly because the right to the space to the east of the mosque is not established by the plaintiff and secondly because the claim made by the plaintiff will not promote the convenience of the public, a factor which by all means can be taken into account in using the description in g anting or refusing mandatory injunction.

21. For these reaons, I dimiss the cross objections and partly allow the appeal in so far as the pulling down the wall at G H is concerned. In other respects, the decree of the trial Court stands. Locking to the measure of success and failure of the parties, I think that the parties should bear their own costs of both the courts.

Order.

Cross objections are dmissed. The appeal is partly allowed and the decree of the trial court is modifoed by dismissing the plaintiff's claim for pulling down and wall at G.H. It is declared that the Public has a right to pass by the passage G H J I and K C A M. The decree granting the cutting of the Bor tree at F stands. A mandatory injunction is given against the defendants in respect of pulling down the wall at A.M. The wall at A M and the tree at F shall be pulled down and cut respectively by the defendants within a month from today. If they fail to do so, the plaintiff can get the work done through court by filing a Darkhast

and recover the costs thereof from the defendants No.2 to 5.

Parties to bear their own costs both in the Court below and of this Court.

31st August 1951.

d.N.6.Shrikhande.
District Judge.